

36  
No. 15057

*See Vol. 3035*  
United States  
Court of Appeals  
for the Ninth Circuit

MOIST COLD REFRIGERATOR CO., INC., a  
Corporation,

Appellant,

vs.

LOU JOHNSON CO., INC., a Corporation;  
MEIER & FRANK COMPANY, INC., a Cor-  
poration; ADMIRAL CORPORATION, a  
Corporation, and AMANA REFRIGERA-  
TION, INC., a Corporation,

Appellees.

Transcript of Record **FILE**

In Four Volumes

Volume III

(Pages 807 to 1204)

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Appeal from the United States District Court for the  
District of Oregon



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(Testimony of Norman S. Parker.)

ing in the [812] refrigerated condition foods susceptible to moisture loss by evaporation and below freezing dry cold air and a dry cold surface for preserving foods in a frozen condition?

A. Read the question, please.

The Court: Just the first five or six lines of Claim 2 of the reissue patent.

The Witness: Well, the first five lines of the Claim 2 of the reissue patent are properly descriptive of the Admiral structure about which I have testified. It has an above freezing moist cold air compartment and a below freezing dry cold air compartment with a dry cold surface for preserving foods in a frozen condition.

Q. (By Mr. Cheatham): Would you point out to the Court and the jury those elements in the Admiral refrigerator, Exhibit 10-A, and supplement that by using Exhibit 9-A-1?

A. The Exhibit 10-A of which I have just opened the door has an upper compartment closed by a pair of doors, and I notice that on one of these doors there is the wording "Dual-Temp Sub-Zero Locker." This locker with this assembly is the — it's shown in — broken-down or taken-down condition in Defendants' Exhibit 117-A.

In other words, you see the back of a liner and if you look in the front you would see a liner which is exactly the same as what has been described on this machine as a sub-zero locker. And this is, as a matter of fact, a [813] sub-zero locker and the refrigeration coils shown around the exposed sleeve



(Testimony of Norman S. Parker.)

provide for a cold or below freezing temperature. Whether it's sub-zero or not depends upon how the user wishes to set it.

The lower larger compartment has a liner which corresponds to and, so far as I can see, is substantially identical with the liner of Defendants' Exhibit 117. It seems to be shaped the same, so far as I can tell without making accurate measurements. It is a liner of the opening which is the same as the liner of the complete Admiral refrigerator which I am now pointing to.

I notice that on the front of the cabinet is a dial—movable or control dial marked "Warm" or "Off," "Colder" and opposite it in larger letters are the words "Moist Cold." Taking that in relation to the patent—the Morton patent in which I have been reading, and from statements in the service manual of the Admiral Dual-Temp refrigerator, Defendants' Exhibit 4-CC-3, I think it's beyond argument that this Admiral Dual-Temp refrigerator has also a moist cold compartment.

The Court: Go ahead.

Q. (By Mr. Cheatham): Mr. Parker, would you continue reading the elements of the Claim 2 on the Admiral refrigerator exemplified by the structure illustrated on Plaintiff's Exhibit [814] 9-A-1?

A. Continuing to read from Claim 2, after the part that was read in the question, are the words:

"Said refrigerator comprising a cabinet having a cooling compartment and a freezing compartment."

(Testimony of Norman S. Parker.)

A cooling compartment is the lower compartment of the showing of the Admiral refrigerator in Plaintiff's Exhibit 9-A-1. The freezing compartment is the upper compartment of that showing.

The claim further says:

"Thermal insulation around said compartments thermally insulating said compartments from each other and from the outside atmosphere."

The service manual and the description of the patent are clear and without destroying that box or taking it apart I think we could properly assume that there is insulation as shown—as omitted from the view in the Plaintiff's Exhibit 9-A of the Admiral box, and that this insulation surrounds both cooling compartments and also separates them.

The next statement in the claim is "a cooling refrigerant expander having heat-conducting surfaces within said cooling compartment and constructed and arranged to maintain its heat-conducting surfaces at a temperature above 32 degrees Fahrenheit while withdrawing heat from said [815] compartment."

The further statement: "Whereby air in said cooling compartment is cooled thereby to a temperature above 32 degrees Fahrenheit and is maintained at a humidity whose relative value is at least 100 per cent at 32 degrees Fahrenheit." That is a long statement.

To go back to the beginning of it, "a cooling refrigerant expander having heat-conducting surfaces within the cooling compartment." The transfer

(Testimony of Norman S. Parker.)

plate—the primary transfer plate about which I have testified and which is marked 104 on Plaintiff's Exhibit 8-A-1 is the only means for abstracting heat from the secondary or the moist cold compartment. Its heat transfer—its heat-conducting surfaces within the cooling compartment are the actual heat-conducting surfaces of the liner itself which conducts heat to the expander on the primary plate 104.

In other words, the entire secondary system with its inner liner surface exposed to the materials to be cooled in the moist cold surface is merely a heat transfer system for delivering the heat to be removed to the coil on the primary plate 104, and this heat-conducting surface is within the cooling compartment and abstracts heat from the cooling compartment and its area and its relationship to the capacity of the machine are such as is amply pointed out in the Admiral manuals that a moist cold is maintained and at that time air is maintained as sufficient humidity to provide a moist cold [816] compartment.

Now, the question of the definition of the language of the claim that the air should be maintained at a humidity whose relative value is at least 100 per cent at 32 degrees Fahrenheit is another way of saying that at the range of use which may be of the order of 38 to 42 degrees Fahrenheit the moisture will be sufficiently high so that if that air temperature were dropped to 32 degrees Fahrenheit the

(Testimony of Norman S. Parker.)

humidity would have a relative value of at least 100 per cent.

It's a long way of saying that a moist cold is maintained in the moist cold storage compartment.

The next limitation is a freezing refrigerant expander having heat-conducting surfaces within the freezing compartment and constructed and arranged to maintain its heat-conducting surfaces at a temperature well below 32 degrees Fahrenheit while withdrawing heat from said compartment whereby air in said freezing compartment is cooled thereby to a temperature well below 32 degrees Fahrenheit.

The structure or the part of the Admiral structure which responds to that limitation of the claim is, of course, the sleeve to which I am pointing in Exhibit 117-A, which is about its exterior in heat contact relation there with a system of ducts and cooling ducts through which the refrigerant is circulating at pressures which are effective to taking up heat out of the freezing compartment to maintain the freezing [817] compartment at a temperature well below 32 degrees Fahrenheit. And it is so described in the Admiral manual.

The next limitation is a single liquefying unit associated with said expanders and constructed and arranged to condense refrigerant expanded by heat extractor from both said compartments, the volatile refrigerant circulating through said expanders being the sole heat-extracting medium. The Admiral Dual-Temp has a single compressor condenser unit to which—to the suction to the low side of which



(Testimony of Norman S. Parker.)

flows the refrigerant which has been evaporated both in the coil or the duct which takes heat from the freezing compartment, and in that part of the primary expander which takes heat from the cooling compartment and no other means are shown for extracting heat from those two compartments.

There is but a single liquefying unit which performs that function for both compartments, and the volatile refrigerant which circulates through these two expanders is the only volatile refrigerant which takes heat to the compressor condenser unit, there to be discharged from the system before the refrigerant returns to continue its operation.

The final statement is "And a thermostat responsive to the temperature in one of said compartments controlling the operation of said liquefying unit." I should have said that there is a provision for a thermostat bulb on the outside of the sleeve at the top of Defendants' Exhibit 117-A, and [818] it is clear both from Mr. Morton's patent and from the showing of the manuals of Admiral that that thermostat is responsive to the temperature, for example, of the cold compartment, and that it controls the operation of the liquefying unit, the motor compressor condenser.

Q. (By Mr. Cheatham): In your opinion, does the Admiral refrigerator come within the terms of Claim 2 of the Bronaugh and Potter Reissue Patent 23,058?

A. In my opinion, it does.

Q. Would you make the same analysis with re-

(Testimony of Norman S. Parker.)

spect to Claim 1 of the Bronaugh and Potter Re-issue Patent 23,058?

A. I think there is no need to go through the various statements in the Claim 2 because they are all in Claim 1. I will merely mention the addition of statements in Claim 1. At Line 31, the following statement:

“Air in said cooling compartment having a substantially stable temperature of about 40 degrees Fahrenheit and having humidity whose relative value is at least 100 per cent of 32 degrees Fahrenheit.”

In the Admiral structure with the upper compartment operating as a freezing compartment and the lower compartment operating as a cooling compartment, the air in the cooling compartment can be kept at a temperature and normally is kept at a temperature somewhere in the neighborhood of 40 degrees [819] Fahrenheit.

Of course, I should say that whether it is precisely at 42 degrees Fahrenheit or a few degrees above or a few degrees below is a matter of adjustment. [820]

Assuming that it is kept in that range and since there is no frosting, refrigerating element, no frosting in the compartment, the air will be maintained at a humidity, if it is at 40 degrees Fahrenheit, which is such that a drop in temperature of the air to 32 degrees Fahrenheit would raise its humidity to a relative value, in my opinion, of at least 100 per cent. In other words, air at 40 degrees

(Testimony of Norman S. Parker.)

Fahrenheit will hold more moisture than air at 32 degrees Fahrenheit, and as the air drops in temperature it loses its ability to hold water, to hold moisture, and if it is maintained at a relative humidity of, say, 85 at 40 degrees Fahrenheit, if my memory is correct and there are of course tables to establish such matters, the relative humidity at 32 degrees Fahrenheit would be at least 100 per cent; therefore, that feature of the claim is also present in the Admiral structure, and the air in the Admiral cooling compartment will have those characteristics. The claim goes on to say that air in the freezing compartment having a temperature well below 32 degrees Fahrenheit. Of course, that will obviously be true if the freezing compartment operated, and is able to operate as a freezing compartment.

The Court: Mr. Cheatham, what claims do you say were infringed by the accused structures? [821]

Mr. Cheatham: All four of them, sir.

The Court: Claim No. 2 is your broadest claim, isn't it?

Mr. Cheatham: I believe it is.

The Court: Are you contending now that even though the accused structures may not infringe Claim No. 2 that they might infringe 1, 3 and 4; is that right?

Mr. Cheatham: No, sir; if they infringed Claim 2, they might not infringe 1, 3 and 4. If they infringe Claims 2 and 1, they might not infringe 3 and

(Testimony of Norman S. Parker.)

4. If they infringe Claims 2 and 4, they might not infringe Claims——

The Court: I thought if they infringed Claim 2 they would infringe all of the claims?

Mr. Cheatham: Not necessarily, sir, because there are other limitations in Claims 1, 3 and 4 which are not present in Claim 2.

The Court: So if they infringe Claim 1 they would obviously have to infringe Claim 2?

Mr. Cheatham: That is right, sir.

The Court: If they infringe Claim 3, they would have to infringe Claim 4?

Mr. Cheatham: Yes.

The Court: So you think it is desirable and necessary to go through each claim separately?

Mr. Cheatham: Just to extent that Mr. Parker would [822] emphasize the difference between the claims which are present in the claims.

The Court: Go ahead.

Q. (By Mr. Cheatham): Mr. Parker, does the Admiral refrigerator infringe the Bronaugh-Potter Reissue Patent 23,058 as you read?

A. In my opinion it does.

Mr. Byron: Of course, that is a conclusion of law. I object to that.

The Court: Yes. As I explained several times, Mr. Parker being a patent expert has the right to express his opinion. The jury does not have to agree with it, but he has the privilege of making that statement.

Mr. Byron: He cannot give a conclusion of law.



(Testimony of Norman S. Parker.)

He can say, "In my opinion, the accused device comes within the terms of the claims," but he cannot say that, "In my opinion, this is an infringement."

Mr. Cuninghame: I think that is what Mr. Parker is really saying.

The Court: It is just a question of semantics. In other words, perhaps he did not say it as technically correct as a patent lawyer would, but we all know that this is his opinion, and he thinks the structure is infringed.

Q. (By Mr. Cheatham): May I in order to have the record [823] straight state the question in this fashion:

In your opinion, does the Admiral refrigerator come within the terms of Claim 1 of the Bronaugh-Potter Reissue Patent 23,058?

A. In my opinion, it does.

Q. Would you repeat the same analysis with respect to Claim 4 of the Potter-Bronaugh Reissue Patent 23,058?

A. To save time, I will omit from Claim 4 the features or characteristics about which I have already testified and which I have stated in my opinion are present in the Admiral structure and will limit myself to the differences.

At the end of the claim is the limitation of a thermostat responsive to the temperature in the cooling compartment and controlling the on-off cycles of the liquefying unit, and the insulation around said cooling compartments offering less resistance to flow

(Testimony of Norman S. Parker.)

of heat thereto from the outside atmosphere than as does the thermal insulation of the freezing compartment to insure starting of said liquefying unit by heat flow into said cooling compartment during an off cycle of said liquefying unit before the temperature in said freezing compartment approaches a non-freezing value. Now, that Claim 4 therefore differs from Claims 1 and 2 in that it specifies what we might call differential insulation, and also specifies a thermostat which is responsive to the temperature in the cooling compartment. The [824] thermostat—considering that is a thermostat—the thermostat in the Admiral structure has a bulb which is on the outside of the freezing compartment and which therefore responds directly to the temperature of the freezing compartment, but that bulb is located close to a bend of the expander, and the expander carries refrigerant across and from the primary plate. There is not any doubt that there is a difference here between the operation of the Brough-Potter patent where you simply see a thermostat in the moist cold compartment. I notice, however, that Mr. Morton in his Patent 2,586,853 says——

The Court: Well, I think that that is not proper, Mr. Parker. If you are explaining the accused structure, you have got to give us the offending part in the accused structure and not in Mr. Morton's patent.

The Witness: No, the offending portion is in the accused structure, but what Mr. Morton says

(Testimony of Norman S. Parker.)

about how this structure works is a part of what controls me in my opinion. In other words, Mr. Morton describes the operation of the structure of the Admiral refrigerator and of Defendants' Exhibit 117-A.

The Court: It is your representation that this structure before you is the identical structure or at least operates identically with that described by Mr. Morton in his patent with reference to the feature about which you [825] are now testifying?

A. That is the opinion that I have. I am speaking now as a reader of this patent and not as a refrigerating engineer. I could be wrong, but, so far as I understand the patent, I understand the structure, the statement of the operation in the patent will apply to this structure.

The Court: If you are of the opinion that it is the same, go ahead.

The Witness: In Column 9 of the Morton Patent 2,586,853, starting with Line 33, I will read:

“Since, however, the thermostatic bulbs are placed in positions outside of the compartments themselves, that is, on the outer walls or adjacent the outer walls of the compartments, they reflect the temperatures of the circulating refrigerant as well as the temperature within the compartments. The system will cycle on and off until the temperature in the moist cold compartment and the temperature in the freezing locker are reduced to within the range desired.”

And so I take that statement to apply to this structure and to be a statement that as long as either

(Testimony of Norman S. Parker.)

of these compartments are calling for refrigeration they will get it.

Now, there are some contrary statements in [826] the service manual in the patent, and, in all frankness, I should say that the theory of the other side is going to be that the only response of the thermostat is to the temperature in the freezing compartment, and I am expressing the opinion based partly on my inspection of the system and partly on what Mr. Morton says in his patent and partly on the necessities of the problem, I am expressing the opinion that when the cooling compartment really needs refrigeration it is going to get it, and that to some degree and to an important degree the thermostat which operates the cycling system responds not only to the temperature needs of the freezing compartment but also to the temperature needs of the cooling compartment.

The Court: Mr. Parker, I might say now that I am going to permit Mr. Byron to interrogate you as an expert engineer because you have expressed opinion which go beyond that of a patent expert into the opinion of an engineering expert.

The Witness: No, my opinion as to why that had to be that way was I could not conceive as a user of electrical refrigeration for the last 20 years of anyone such as Admiral putting on the market a refrigerator which would have a moist cold compartment or any kind of storage compartment which would get so warm that the food would spoil, and



(Testimony of Norman S. Parker.)

unless there is some response to the temperature in the [827] moist cold compartment I do not see how the machine can operate. I do not express an opinion as an engineer. I am not an engineer, and I am expressing that opinion on the basis of my own use for 25 years of electric refrigeration.

The Court: Go ahead.

The Witness: I was discussing also in the claim the thermal insulation. The thermal insulation, the differential, I do not offhand see in the Admiral structure. I believe that it is indicated in the cover by a differential size of sleeve in the cover of the Admiral circular or service manual, Plaintiff's Exhibit 4-CC-3, but it does show up very clearly in the Amana box, 10-B, where you can see the difference in thickness of insulation with thicker insulation in the freezing compartment (indicating Exhibit 10-B). I understand indirectly that there is some stipulation in the case that the operation of the Amana and the Admiral boxes are substantially the same, but if I am correct in that assumption and if there is differential insulation used by the Admiral box, as I understand that there is, why, then it would fall within the terms of the passage that I have read at the end of Claim 4.

Mr. Byron: I would like to know whether or not the witness is testifying that there is differential insulation or there is not. [828]

The Witness: In the box?

Mr. Byron: In either one. You say you assume. Is there?

(Testimony of Norman S. Parker.)

The Witness: I don't know whether or not there is a differential insulation in the Admiral refrigerator—let's get the exhibit number, Plaintiff's Exhibit 10-A—I do not know whether or not there is differential insulation in it. I am satisfied from looking at Plaintiff's Exhibit 10-B, the Amana refrigerator, that there is.

The Court: I think your testimony is clear on this. He says he finds it in the Amana but not in the Admiral because he does not know whether it is in the Admiral or not.

Q. (By Mr. Cheatham): Then, in your opinion, does the Amana refrigerator come within the terms of Claim 4 of the Bronaugh-Potter Reissue Patent 23,058?

A. Yes; if my understanding is correct that the parties have stipulated that the two refrigerators operate substantially the same.

Mr. Byron: Operation and construction are two different things, your Honor.

Mr. Cuninghame: If your Honor please, I have been assuming that was all settled in our pre-trial order that Amana or the Dual-Temp box could be taken as equivalents for purposes of this case. Am I wrong in that assumption? [829]

The Court: In what item is the stipulation contained?

Mr. Byron: We do not care anything about the proportional insulation anyhow, but I am just saying they are not proving a case of infringement even on that point.

(Testimony of Norman S. Parker.)

Now, what the stipulation was was this: That if the Admiral infringed a valid claim of the patent in suit, so does Amana; but if the Admiral does not infringe, Amana does not. Now that is the stipulation.

The Court: If it is shown, in other words, that Admiral infringes any of the four claims as made, then the jury can find that the Amana infringes?

Mr. Byron: Yes.

The Court: Does the stipulation cover the fact that an element may be present in Amana that is not present in Admiral?

Mr. Byron: No, it does not.

Mr. Cuninghame: If your Honor please, there is no testimony that relative or proportional insulation is not present in the Admiral box. The testimony, as I understood it, was that Mr. Parker did not now know, and I think it is up to us to complete the testimony.

The Court: Very well. In other words, as part of your case in chief you will have to show that the Admiral has an offending type of insulation in order to show the infringement of Claim No. [830] 4?

The Witness: I have testified that I do not know whether or not there is differential insulation in the Admiral box.

The Court: I think that the witness should be permitted to express an opinion that, assuming there is such differential insulation, does he in his opinion believe that the claims are infringed.

(Testimony of Norman S. Parker.)

Q. (By Mr. Cheatham): Assuming that there is such differential insulation in the Admiral refrigerator, would it be your opinion that Claim 3 of the Bronaugh-Potter Reissue Patent 23,058 is infringed? A. That would be my opinion.

The Court: Would your answer be the same for Claim 4, making the same assumption?

The Witness: As to the Claim 4, making the same assumption, it would be my opinion that the Admiral box would be within its terms.

The Court: That covers it as far as an expert is concerned. Do you have any other testimony?

Mr. Cheatham: Yes, your Honor.

The Court: About how long?

Mr. Cheatham: I have perhaps 15 or 20 minutes, perhaps a half-hour.

The Court: Go ahead.

Q. (By Mr. Cheatham): Mr. Parker, are you familiar with the [831] patent to Anderson, No. 1,439,051?

A. I have read it several times.

Q. I refer you to Plaintiff's Exhibit 16-B and ask you if that is an enlargement of a portion of the patent for Anderson, 1,439,051? [832]

A. Plaintiff's Exhibit 16-B is an enlargement of Figure 1 of Anderson Patent 1,439,051.

Q. (By Mr. Cheatham): What, if any, teaching in the Anderson patent is there maintaining a moist cold atmosphere in the cooling compartment?

A. There is no discussion or no statement in



(Testimony of Norman S. Parker.)

Anderson relating to the moisture content of the air in any part of the device.

Q. What, if any, teaching is there in the Anderson patent 1,439,051 as to a nonfrosting coil in the cooling compartment?

A. Nothing is said in the patent about a nonfrosting coil so far as I can remember.

Q. What, if any, teaching is there in the Anderson Patent 1,439,051 of means for preventing frosting in the cooling compartment?

A. Nothing is said about it.

Q. What, if any, teaching is there in the Anderson Patent 1,439,051 as to the disadvantage of frost accumulation on the coil in the cooling compartment?

A. There is no discussion of it in the Anderson patent at all.

Q. What, if any, teaching is there in the Anderson Patent 1,439,051 as to proportional insulation?

A. You mean differential insulation?

Q. Differential insulation. [833]

A. Nothing in the patent about it. The insulation about both compartments, so far as I can tell from the drawing, is of the same thickness and there is no discussion in the patent of any variation or no teaching of any variation of the thickness of insulation.

Q. Is there a frosting coil in the cooling compartment of the Anderson patent 1,439,051?

A. Yes. In my opinion it would frost some.

(Testimony of Norman S. Parker.)

The Court: I didn't hear what you said.

The Witness: It will frost to some degree or to some distance in the upper box. The coil or the pipe which, I believe, is numbered 41, goes up into the upper box. In my opinion, it would frost.

Q. (By Mr. Cheatham): Do you have any knowledge as to whether the coil on the Anderson Patent frosts?

A. Well, I know that Mr. Anderson said that it did, the inventor.

Mr. Byron: Objected to as hearsay.

Mr. Cuninghame: If your Honor please, I think we had better ask the witness a few more details about that, but my understanding is that this was—the occasion was the hearing of the testimony of Mr. Anderson in court on this very subject.

Mr. Byron: We weren't there. We weren't there to cross-examine.

Mr. Cheatham: Mr. Parker—— [834]

The Court: Objection is sustained.

Mr. Cheatham: Your Honor, we have a long hypothetical question and I want to know if the witness' qualifications to answer the question will be stipulated by the opposing side, or shall we——

The Court: We have already stipulated Mr. Parker's qualifications. He is a patent expert.

Do you have a copy of the question that you are about to propound to him?

Mr. Cuninghame: Yes, sir.

The Court: All right.

Now, will you give one to Mr. Byron and let

(Testimony of Norman S. Parker.)

him take a look at and while the question is being asked if you have an extra copy—you have no extra one? I will listen.

Mr. Cuningham: Yes, I think we have.

The Court: Mr. Parker, are you well-acquainted with the question that is going to be propounded to you?

The Witness: I have heard it read once.

The Court: Well, if that's all you have read it you had better take another copy and read it as they are reading it to you.

Mr. Cuningham: I think he is just a little modest, your Honor. He has heard parts of it at different times.

The Court: Is this your last question to Mr. Parker?

Mr. Cheatham: I have just discovered that I skipped one question, and then I want to ask him a question about [835] his interest.

The Court: About what?

Q. (By Mr. Cheatham): Mr. Parker, have you read the patent of Morton, 2,586,853, which is in the book of Admiral patents, Exhibit 19, and it is marked 19-CC?

A. May I see? Have you got a copy of it?

Q. Which patent relates to a gasket for the door of the refrigerator?

(Bailiff hands the document in question to the witness.)

(Testimony of Norman S. Parker.)

A. Yes, I have read this patent, Morton 2,586.-853. Refrigerator door gasket.

Q. (By Mr. Cheatham): Mr. Parker, assume that a valid hypothetical question——

The Court: Just one moment. Ask him all the questions except this one because I want to go over this question with you and with counsel before it's submitted to the witness.

Q. (By Mr. Cheatham): Mr. Parker, do you have any interest in the outcome of this litigation?

A. No, none whatever.

Mr. Cheatham: That is all, subject to the question which your Honor has.

The Court: Ladies and gentlemen, it is now almost 4:15. There is one long question which will be propounded to Mr. Parker tomorrow, after which Mr. Parker will be subjected [836] to cross-examination. As you know, we will have testimony tomorrow and Wednesday after which we will recess until the following Monday. I know you have all followed the admonition not to discuss this case with anyone else or come to a conclusion as to how the case may be decided, and I urge you to continue the good work.

Now, you are excused until 9:30 tomorrow morning.

(Whereupon the jury was excused and the following proceedings were held out of the presence of the jury:)

The Court: Mr. Byron, have you read this question?

Mr. Byron: No, I haven't. I will do so now.

The Court: I might say right now that I hoped that we would be able to agree on the question to be propounded to Mr. Parker. It's 4:15 now and it seems to me it may take some little time; however, I do want to suggest that perhaps Mr. Byron and Mr. Cuninghame can get together and agree on some of the elements of the question, and if there is any disagreement then I would be willing to pass upon it tomorrow morning. But I may be incorrect in this, but I can't see on the question of a fair royalty the relevancy of the fact that this was originally tried before a Court and then reversed and the reissue patent granted and go into the whole history of it, and I certainly don't see the relevancy of the fact that Admiral charges 2½ per cent for a rubber gasket that [837] they are manufacturing. That may be more or less than what should be charged for a refrigerator.

The question of the impact which this refrigerator may have made on the market, I think, probably is relevant. It appears to me that what they are trying to show is that this was a fundamental and basic invention. Now, that may be true or it may not be true, but I don't think it goes to the propriety or impropriety of the question. That is something that can be brought out on cross-examination by your other witnesses.

Of course, if you destroy the basis of the witness' answer, that's just part of the case, but—so I am merely saying that I think the history of the invention is applicable and what impact it made on



the market is applicable, but I do not see the relevancy of the court proceedings nor of the gasket that was charged by Admiral.

Now, it may very well be that you can show that for some similar patents, General Motors or General Electric, that they pay 10 per cent or some other figure. The only thing that disturbs me is, aren't we getting into a situation in which we are going to have to evaluate the fundamental character of these other patents upon which royalties are made?

Now, I assume that some of you may have had experience in propounding similar questions to witnesses in [838] other cases; however, there is this one difference: I think both of you men have confined your activities primarily to trials before the Court, and that which may be proper before a Court or that which may be received by a Court doesn't necessarily mean that that same testimony should be submitted to the jury, because theoretically, at least, the judge is in a position to separate the wheat from the chaff and not be affected by hearsay or things which may only have a remote connection to the problem. Therefore, in a hypothetical question propounded to a jury, I am going to have to rule much more strictly than if that same question was propounded to me sitting as the Court.

With this general background I hope, Mr. Cunningham and Mr. Cheatham, you will be able to talk and arrive at an agreement with Mr. Byron. I will be down here tomorrow morning not later than

9:00 o'clock and if you want to see me at that time I will be glad to hear you.

Mr. Cuninghame: All right.

The Court: Recess till tomorrow morning at 9:30.

(Whereupon, at 4:20 o'clock p.m. an adjournment was taken until 9:30, Tuesday, November 22, 1955.) [839]

Tuesday, November 22, 1955, 9:20 A.M.

(Proceedings herein were resumed, pursuant to adjournment, as follows:)

(After discussion between Court and counsel in chambers the following proceedings were had on the record:)

The Court: Do you want to specify the reasons why you believe that the question is improper?

Mr. Byron: I think we will bring that out on cross-examination.

Mr. Cuninghame: I think we should make a record now, your Honor.

Mr. Ramsey: He wants you to make your objection to the question if you want to make your record.

Mr. Byron: Oh, yes; we make our objection now to the hypothetical question because there are assumptions stated therein that have not been proven.

Mr. Cuninghame: Specify them.

The Court: We want specificity here. In open court we are going to permit you to make the objection in the manner which you have just made.

Mr. Byron: It has not been established that the accused device has a cooling refrigerant expander having heat-conducting surfaces within said cooling compartment and constructed and arranged to maintain its heat-conducting surfaces at a [840] temperature of above 32 degrees Fahrenheit.

(Discussion off the record.)

The Court: I did not think the matters Mr. Byron was putting in had any relevancy to the issue involved. If you want to make your record, you may, but not on the question of the validity of some other patent.

Mr. Byron: All right. The objection is on the basis that it has not been established that the refrigerators covered by the Potter patent were not the first to provide a single compact unit for household use, a compartment for the preservation of frozen food in a moist cold atmosphere above freezing temperature, and a separate compartment for freezing and preserving other foods safely for long periods of time in frozen state at temperatures substantially below the freezing temperature. Also, the record does not show that such Potter refrigerators for the first time brought refrigeration of the kind claimed to the home—the first time, that is.

We object also to the statement that the Potter refrigerator for the first time provided a household unit wherein without the use of covered pans the moisture of the food stayed in the food instead of being dried out.

We also object on the ground that the hypothetical question states that the Potter refrigerator elim-



inated a frosting and defrosting of the chilling element in the [841] compartment for the preserving of foods at temperatures above freezing.

We also object on the ground that the statement in the question is that such Potter refrigerators constitute the first major improvement in refrigeration in many years.

We also object to the statement that the Potter refrigerator—that in such Potter refrigerators the transference of odors from one kind of food to another is minimized.

We also object that such Potter refrigerators call question that the Potter refrigerators constitute a brand new idea in refrigeration and that the Potter refrigerator is just not a new model.

We also object that such Potter refrigerators possess such advantages that they are sold largely as replacements for conventional refrigerators.

Object to the statement in the hypothetical question that such Potter refrigerators afford larger possibility of profit per unit to the manufacturer or his distributors and that said refrigerators have the retail value based upon any Potter invention and that they are not more profitable than the conventional refrigerators of comparable size.

We also object to the statement in the hypothetical question that the conventional refrigerators which had been produced in the United States in and prior to 1931 dried out [842] the natural moisture of the foods stored therein because of the frosting of the chilling element within the food

chamber and that said fact had existed from the beginning.

The Court: I think I am getting more than I bargained for. I asked you to specifically state it, but I did not expect such great specificity. Do I understand that you are objecting to these questions on the ground that there is inadequate evidence upon which to predicate these specific items to which you object?

Mr. Byron: Yes, sir; I do.

The Court: Can you not summarize that last part?

Mr. Byron: Also, that they are argumentative and totally improper in these assumptions.

Mr. Cunningham: May I add, your Honor—and I hope Mr. Byron is including certain evidence that he knows all about that is in deposition form which we have agreed can go in and which is not at the moment before the Court, is not in the record.

The Court: Of course, that is true. He can assume facts which are not yet in evidence and which he knows will be introduced in evidence.

Now, there is this last paragraph on Page 2 which you were starting on. Can you not summarize that?

Mr. Byron: Well, I object to all of the positive statements made therein with respect to the so-called advantages, [843] material, profitwise, and everything else in connection with the refrigerators of the Potter type.

Mr. Ramsey: Also, on the ground that there is no evidence of commercial success of any refriger-

ator made by or under the reissue patent, nor in fact, any sale thereof.

Mr. Cuningham: Now, if your Honor please, if that completes the objection I would like to ask your Honor's permission by this witness on his direct examination before he goes into this hypothetical question to have him tell in his own words, of course, that he was the plaintiff's expert in the Stewart-Warner case; that he read the original claims on the Stewart-Warner device, and that he knows that device, and I would like to have him state the—at least some of the differences between that device which is exemplified by Stewart-Warner Exhibit 111 at Page 2534 of the Stewart-Warner record and the devices upon which the Admiral Corporation and the Amana, upon which he has read the reissue claims.

The purpose, sir, of that request is in support of the statements that I have made in the record at least once, and I think maybe more often, to the effect that the Admiral Corporation came much closer to the Potter patent and the Potter invention, both the reissue and the original, than did the Stewart-Warner device which was held to [844] infringe the original claims. I think that is vital, not just relevant, on the issue of the willfulness and deliberate character of the Stewart-Warner infringement. They, with full knowledge and with the aid of engineers having full knowledge from the Stewart-Warner Company and with the aid of Mr. Glen Nutley, as the testimony will show, concocted and had the temerity to use these patent claims

more than did the Stewart-Warner Company in many, many respects, and I think the record should show so, and I think the witness who is now on the stand is the best qualified witness to give that evidence.

Mr. Byron: That has no place in this case at all.

The Court: I am not going to permit it to go in, and I have already announced to you, Mr. Cunningham, that I will not permit such testimony.

Mr. Cunningham: This, your Honor, is not an effort to retry the Stewart-Warner case. It is an effort to get of record the diagrammatic showing of the Stewart-Warner Exhibit 111.

The Court: Mr. Cunningham, from the minute you got into this case you have been trying to get that Stewart-Warner case in and the fact that the jury held in your favor and sustained the validity of that fact, and you are not going to get it in here, and the minute you do you are going to get a mistrial in this case. I am telling you. [845]

Mr. Kolisch: What he has just said, this could only go to the issue of trebling damages, which is purely a Court function.

The Court: Perhaps we can do that outside the presence of the jury.

Mr. Cunningham: Very well. If your Honor please, may I make one further request. You may recall practically the last words of testimony of Mr. Parker were to the effect that he was unable to testify as to the relative or proportional insulation of the Admiral Dual-Temp refrigerator. I would like to interrupt his testimony the first thing this



morning for just one or two questions, and I give notice of my request that Mr. Ray Bommer, the chief engineer of Admiral, who is in attendance here at the trial, should take the stand and testify about it.

The Court: I told you how to ask that ququestion, and you did follow my advice. You have got it in evidence now. You do not need it at this time.

Mr. Cuningham: Well, sir, I would like to call him before Mr. Parker gets away from town. He is leaving tonight. He will be back on Monday, but he has got some business to attend to in Chicago.

Mr. Byron: The other witness will be here Monday, too.

The Court: All right; that is all. [846]

(The following proceedings were had in open court in the presence of the jury:)

### NORMAN S. PARKER

a witness in behalf of the plaintiff, thereupon resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination

(Continued)

By Mr. Cheatham:

Q. Mr. Parker, assume that a valid hypothetical patent alike in all respects to the Bronaugh and Potter patent No. 2,056,165, and issued on an application filed in 1931 and reissued on December 14, 1948, as Reissue No. 23,058, which hypothetical re-

(Testimony of Norman S. Parker.)

issued patent contains the claims of Reissue Patent No. 23,058 in suit and which you have read to the jury; further assume refrigerators embodying the function and structural features of such hypothetical patent and such claims, and that such refrigerators were placed on the market in 1932 and were the first to provide in a single compact unit for household use a compartment for the preservation of fresh foods in a moist cold atmosphere above freezing temperature and a separate compartment for freezing and preserving other foods safely for long periods of time in frozen state at temperatures substantially below the [847] freezing temperature; that such refrigerators for the first time brought refrigeration of a kind claimed to the home; that such refrigerator for the first time provided a household unit wherein, without the use of covered pans, the moisture of the foods stayed in the food instead of being dried out; that such refrigerators eliminated frosting and defrosting of the chilling element in the compartment for the preservation of foods at temperatures above freezing; that such refrigerators constitute the first major improvement in refrigeration for many years; that in such refrigerators the transference of odors from one kind of food to another is minimized; that such refrigerators constituted a brand-new idea in refrigeration, not just a new model; that such refrigerators proposed such advantages that they were sold largely as replacement for conventional refrigerators; that such refrigerators afford larger possibility of profit

(Testimony of Norman S. Parker.)

per unit to the manufacturer or his distributors and that such refrigerators have a retail value ranging from \$359.50 to \$449.50 for Amana and \$389.95 to \$529.95 for Admiral, which is substantially greater than conventional refrigerators of comparable size; and assume further that the conventional refrigerators which had been produced in the United States in and prior to 1931 dried out the natural moisture of the foods stored therein because of the frosting of the chilling element within the food chamber, and that said fact had [848] existed from the beginning of electrical refrigeration during which time a substantial amount of household electric refrigerators were produced in the United States and that the largest manufacturer of household refrigerators in the United States which maintains a staff of trained competent specialists in various branches of engineering, devoting their entire time to experimental work for the further development and improvement of the company's products, which include items in addition to household electric refrigerators presented in 1930 as its solution of the problem of food dehydration in household refrigerators a covered pan having a small cubicle content as compared with the cubicle content of the food chamber in the conventional refrigerators; and that the second largest manufacturer of household refrigerators in the United States, which also maintained a comparable staff of trained competent specialists attempted unsuccessfully at about the same time to place on the market two conventional refrigerators fastened to-

(Testimony of Norman S. Parker.)

gether to minimize the same dehydration problem by operating said refrigerators simultaneously at different temperatures; assume further that a patent alike in all respects to Admiral's Patent No. 2,636,228, Exhibit 19-CC, covering a rubber gasket for a refrigerator door had since 1952 been licensed to large rubber and refrigerator companies at a royalty of  $2\frac{1}{2}$  per cent of the manufacturer's sales price; [849] assume that in the years 1949 to 1953, inclusive, there were sold in the United States a quantity up to 165,000 such refrigerators covered by such hypothetical patent and the claims stated above; assuming these facts to be true, have you an opinion based upon your experience as to what would be a reasonable royalty to be paid for the nonexclusive rights to manufacture and sell such refrigerators in the United States during such period?

Mr. Byron: May it please the Court, I have made my objection of record in the conference we had in Chambers just before coming into this court this morning, but I will not go into great detail on that, but I make an objection to this hypothetical question on the ground that it assumes facts not proven, it's argumentative, and entirely improper.

The Court: All right. I am going to permit the witness to answer the question.

Mr. Parker, do you have an opinion?

The Witness: Yes, your Honor, I have.

The Court: All right.

Mr. Cuninghame: If your Honor please, there



(Testimony of Norman S. Parker.)

were some revisions, as you know. I would like to show Mr. Parker what revisions have been made. May I hand him my copy for that purpose?

The Court: Well, there have been no revisions, Mr. Cuningham. I permitted you to do it exactly the way you [850] did except some history which I regarded as irrelevant.

Mr. Cuningham: Well, if your Honor please, I think you didn't understand me. I didn't make myself clear. There were certain minor revisions. May I show them to your Honor?

The Court: All right. Show them to the witness.

(Whereupon Mr. Cuningham confers with the witness.)

Q. (By Mr. Cheatham): Please state your opinion, Mr. Parker.

A. On the basis of the assumption——

Mr. Cuningham: Wait. You didn't get an answer, did you?

The Witness: On the basis of the assumptions of this hypothetical question I would express my opinion that a royalty of anything less than 10 per cent would be inadequate.

Q. (By Mr. Cheatham): 10 per cent of what, Mr. Parker?

A. 10 per cent of the net sales price.

Q. The net sales price of whom?

A. Received by the manufacturer.

Q. And what, in your opinion, is a reasonable

(Testimony of Norman S. Parker.)

royalty to be paid for such a nonexclusive right to manufacture and sell?

A. I would say that 10 per cent of the net to the manufacturer is a fair royalty.

Mr. Cheatham: That is all.

The witness is yours.

The Court: All right. That completes the direct examination of Mr. Parker. [851]

Mr. Byron, are you going to interrogate Mr. Parker?

Mr. Byron: Yes, sir.

The Court: Go right ahead.

#### Cross-Examination

By Mr. Byron:

Q. First I wish to place a very simple question, and I am going to refer to Plaintiff's Exhibit—Defendants' Exhibit 117, which discloses or shows the cooling chamber of the accused Admiral refrigerator. We have here the cooling chamber. I am inserting the pointer within it.

The Witness: Well, your cooling liner——

Q. Well, the cooling compartment. I am speaking about the claim now. That is the cooling compartment, is it (indicating)?

A. Well, in the proper sense the compartment is the actual space which is refrigerated. Of course, that would include anything within the insulation.

Q. Let's get down to brass tacks now. If I put

(Testimony of Norman S. Parker.)

this envelope in that compartment it is in there, isn't it?

A. It certainly is in the cooling compartment.

Q. Now, it's not outside the cooling compartment?      A. Correct.

Q. All right. Now, then, how do we determine the volumetric capacity or the volume of the cooling compartment? We do it, do we not, by getting the dimension from wall to wall and [852] from the rear wall to the front?

A. That's right. That defines your storage space.

Q. That's right. That is your storage space. And that storage space is the space in which you cool the food, is it not?      A. That's right.

Q. And the same thing is true with respect to the freezing compartment shown in Defendants' Exhibit 117-A, correct?      A. Correct.

Mr. Byron: Now, I would like to have the two enlarged charts, one showing the patent office drawings of the reissue patent in suit, and the other the enlarged drawing of one figure of the Anderson patent.

(Whereupon the exhibits were moved to the better view of the jury.)

Q. (By Mr. Byron): Mr. Parker, we have before us Plaintiff's Exhibit 16-A, showing an enlargement, the patent office drawings of the patent in suit, and Plaintiff's Exhibit 16-B, an enlargement of Figure 1 of the Anderson patent, and I

(Testimony of Norman S. Parker.)

wish to compare these two element for element with respect to certain parts or elements. Now, then, the patent in suit has a cabinet, has it not, represented primarily by the reference character 10?

A. Right.

The Court: One second. [853]

Mr. Cuningham: Objection, if your Honor please. This is outside the scope of the direct.

The Court: Objection overruled.

Q. (By Mr. Byron): Your answer was Yes?

A. Yes.

Q. The Anderson patent shows a cabinet represented generally by the reference character 9, correct?

A. Right.

Q. The Potter patent shows a cooling chamber 14?

A. Yes.

Q. The Anderson refrigerator shows a cooling chamber 6?

A. Yes.

Q. The Potter patent shows a freezing chamber—now, you can take your choice here as plaintiff wants it.

Mr. Cuningham: Objection, your Honor.

Mr. Byron: The freezing chamber——

The Court: What is the matter?

Mr. Cuningham: I object to that “you can take your choice here as plaintiff wants it.” I object to the characterization of his answer before he gives it. I ask that the question be stricken.

The Court: Are you asking about 12 or 13?

Mr. Byron: Well, that is the question. Both are freezing compartments and counsel made some ob-

(Testimony of Norman S. Parker.)

jection because when I was up here before I pointed them out to him, and he said [854] I should have pointed at one, and I pointed at one and he said I should have pointed at two.

Mr. Cunningham: Objection. Move to strike it.

Mr. Byron: Now, my question is this. I will rephrase the question.

Q. The patent in suit has a freezing compartment 12, has it?

A. That is a freezing compartment, yes.

Q. And it has a freezing compartment 13, has it?

A. Yes.

Q. Now, then, the freezing compartment 12 has surrounding it a freezing coil 22, has it?

A. Yes.

Q. And then whatever reduction in temperature in the freezing compartment 13 there is is caused through the freezing coil 22, is it not?

A. Yes.

Q. Now then, referring to Anderson, Anderson has a freezing compartment 7, has it not?

A. Yes.

Q. And he has a series of coils in his pipe which receive ice trays 37, is that correct?

A. Correct.

Q. And the water in those ice trays, the water is frozen by virtue of the cooling effect of the refrigerant in the freezing coil, is that correct? [855]

A. Right.

Q. And the chamber as a whole, 7, is cooled



(Testimony of Norman S. Parker.)

through the action of the volatile refrigerant passing through the freezing coil 37. That's correct?

A. Correct.

Q. Now then, the Potter reissue patent has a machinery compartment in the bottom of the cabinet, is that right? A. Correct.

Q. And likewise, Anderson shows machinery in the bottom compartment 8? A. Right.

Q. Now, I use machinery broadly because I don't think it's necessary now to go into detail. We know that in each instance there is a motor driving a pump and the ultimate effect is to draw gas from the system and compress it and condense it so that it will be in condition to go through the cycle again? A. Correct.

Q. And that is the same in both cases?

A. Correct.

Q. Now, leading from the compressor mechanism, the liquefying unit, we will say, in the Potter patent, there is a coil 24, is that correct?

The Court: I think it might be well for Mr. Parker to go down there and stand by you.

Mr. Byron: I think it would be a good idea. I will be [856] in good company.

(Whereupon the witness leaves the stand.)

The Witness: May I have that question again?

(Last question read.)

The Witness: Correct.

Q. (By Mr. Byron): And that coil or pipe 24

(Testimony of Norman S. Parker.)

leads to the freezing coil 22 in the Potter arrangement. Is that correct?

A. Yes; through a reduction valve.

Q. I will get to that. It leads to the freezing coil?

Mr. Cunningham: Objection, your Honor. I think he should be allowed to finish his answer.

The Court: He finished it.

Q. (By Mr. Byron): Now, in the Anderson arrangement there is a pipe 32 leading from the compressor condenser set to the freezing coil 34, correct? A. Correct.

Q. Now then, the freezing coil is shown at 34 in the freezing compartment 7 in Anderson?

A. Yes.

Q. And as the freezing coil 22 in Potter is shown in the freezing compartment 12 of—or, say, combination 12-13 of the Potter patent. A. Yes.

Q. Now then, interposed in the connection between the motor compressor condenser set in the patent in suit—let me [857] rephrase that. Interposed between the motor compressor condenser set and the freezing coil 22 in Potter there is an expansion valve 23, is that right? A. Yes.

Q. And in Anderson interposed between the compressor condenser set and the freezing coil there is an expansion valve 33? A. Yes.

Q. And then in the Potter patent in suit there extends from the freezing coil 22 this same pipe or conduit or coil which passes into the coil 25, is that correct? A. That is correct.

(Testimony of Norman S. Parker.)

Q. And that is in the cooling compartment 14?

A. Yes.

Q. And likewise, in the Anderson patent the freezing coil in the freezing compartment 7 is connected to the cooling coil 41 and 40 in the cooling compartment 6 of Anderson? A. Correct.

Q. Is that correct? A. Yes.

Q. Then in the patent in suit the refrigerant—or, there is a connection from the cooling coil 25 back to the compressor set, is there not?

A. Yes. [858]

Q. And, likewise, there is a connection from the cooling coil portion 42 in Anderson back to the motor compressor set? A. Yes.

Q. Now, then, the cycling in both cases is the same, is it not; that is, from the motor compressor condenser set through the freezing coil, through the cooling coil, and back to the compressor condenser set; that is correct? A. Yes.

Q. And the same thing is true in Anderson?

A. Yes.

Q. The freezing coil 22 in Potter is in series with the cooling coil 25 in Potter; is it not?

A. Yes.

Q. By that I mean, let us say that we have two sections of hose that we are hooking up to the tap-pet or the faucet in our yard. We take the one section and hook it up to the faucet and then take the second section and hook it onto the first section. Those two sections, then, are in series; are they not? A. In series, in series.

(Testimony of Norman S. Parker.)

Q. In the same sense, the coils, freezing coil 22 and the cooling coil 25 in Potter, are in series?

A. That is right.

Q. Likewise, the freezing coil 34 in Anderson and the [859] cooling coil 40 in Anderson are connected in series? A. That is true.

Q. The refrigerant used in the Potter system and in the Anderson system is a volatile refrigerant, isn't it? A. That is right.

Q. And a volatile refrigerant is what?

A. A volatile refrigerant is a refrigerant which will volatilize or evaporate upon proper pressure drop.

Q. For the purpose of——

A. Abstracting heat.

Q. From a freezing compartment, a cooling compartment? A. That is right.

Q. They are the same in the two cases, in the Potter case and in the Anderson case?

A. In that sense, yes.

Q. Now, then, in the Potter patent there is insulation between the machine compartment 11 and the freezing, combined freezing compartment 12-13, and between the freezing compartment and the cooling compartment 14 and around the top and the sides of the refrigerator shown in Potter; is that correct? A. That is true.

Q. And the same thing is true in the Anderson patent, is it not? A. Yes. [860]

Q. Now, then, in the Potter arrangement there

(Testimony of Norman S. Parker.)

rator in the food storage compartment. I do not think it is proper to say that his improvement over the art consisted merely in making that change, since a finned coil or a coil of that type was already old at the time that Bronaugh and Potter were working.

Q. What I am trying to get at is this: Potter shows one type of coil 25. You say it is a finned coil, 25? A. Right.

Q. And Anderson shows a coil 40 which does not have fins; that is correct, is it?

A. That is correct.

Q. It is by virtue of the fact that Potter provided fins on his coils that he prevented dehydration of food in the food compartment; that is correct, isn't it? A. That is correct.

Q. And so the improvement for the preventing of the dehydration was, in Potter was to provide the coil 25 with fins?

A. That is the change he made.

Q. All right. Then if the cooling coil 40 in Anderson [863] were provided with fins, he would accomplish the same result, would he not?

A. He could have.

Q. Yes, I say he would have if he put fins on it?

A. If he did, yes.

Q. That is right. Now, you have stated that finned coils were old at that time, at the time Potter came into the field? A. They were.

Q. I know you might have in mind the Larkin patent. You may have something else in mind that



(Testimony of Norman S. Parker.)

you knew of in actual operation because of your extensive knowledge in the refrigeration field.

A. Well, I am familiar with the Larkin patent, but I have also seen other finned coils, of course.

Q. Long before, or at least before?

A. Before, shall we say.

Q. Yes, before Potter? A. That is right.

Q. For the same purpose of absorbing heat?

A. Finned coils are used to absorb heat; correct.

Q. That is right; and let us refer to this Larkin patent.

(Discussion off the record.)

Mr. Ramsey: May we ask that the Defendants' Exhibit 106, which is the Larkin patent, be admitted? [864]

Mr. Cuningham: I object to it, your Honor, entirely outside the scope of the direct.

The Court: What is that exhibit?

Mr. Ramsey: That is the Larkin patent that the witness is referring to.

Mr. Cuningham: I have no objection to its correctness or authenticity, but I think it is the wrong time to get into that prior art. That is not part of plaintiff's case.

Mr. Byron: It is part of plaintiff's case, if you please; Bronaugh talked about it, talked about buying a Larkin coil and putting it into the Potter refrigerator, and I think we ought to identify it.

Mr. Cuningham: If your Honor please, this all comes in under the alleged invalidity of the patent

(Testimony of Norman S. Parker.)

is a thermostat 31 in the upper compartment or cooling compartment 14; that is correct?

A. That is correct.

Q. You know that there is a thermostat in the upper or cooling compartment 6 of Anderson; you know that?

A. It is mentioned in the specifications, yes.

Q. Well, that means it is there?

A. It is there.

Q. That is right. It is there just as much as it is in Potter? A. True.

Q. The function of the thermostat in Potter is to start and stop the motor for setting up the operation of the system; that is correct?

A. That is correct.

Q. And the same function, the same thermostat in Anderson does exactly the same thing, doesn't it?

A. Exactly.

Q. Now, then, the elements that we have mentioned in common here, and I go no further than that, element for element, they are all old in Anderson; that is correct, isn't it? A. That is true.

Q. Anderson is about twelve or thirteen years earlier than Potter; that is correct? [861]

A. Yes.

Q. Well, now, their being all old elements, the elements that I have mentioned all being old, then the grouping of elements—call it a combination of elements if you will—is an old combination of old elements, is it not, insofar as the parts I have mentioned?

(Testimony of Norman S. Parker.)

A. So far as you have mentioned them, yes.

Q. Now, then, what improvement Potter is supposed to have made here is an improvement in creating, or rather preventing frosting of a coil in the cooling compartment 14, for preventing dehydration of the air and food in that compartment. The improvement he made there was in that feature, in improving that coil, was it not? In other words, how does the coil in Potter differ from the coil——

Mr. Cuninghame: Your Honor, objection; I think he should ask one question, not five or six.

Mr. Byron: I think there were two, but I was just trying to clarify. I will rephrase it, if you desire.

The Witness: May I have the question read?

(Pending question read.)

Mr. Byron: I will rephrase that if you desire.

The Witness: That is a double-barreled question.

Mr. Byron: I will strike that question and try to simplify it.

Q. Then the change which Potter made over Anderson to [862] prevent dehydration of food and air in the cooling compartment was in providing the coil in the cooling compartment with fins; is that correct?

A. I would say that the Potter—the Bronaugh-Potter structure included the use, and differed from Anderson in this respect of a non-frosting evapo-

(Testimony of Norman S. Parker.)

rator in the food storage compartment. I do not think it is proper to say that his improvement over the art consisted merely in making that change, since a finned coil or a coil of that type was already old at the time that Bronaugh and Potter were working.

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A. He could have.

Q. Yes, I say he would have if he put fins on it?

A. If he did, yes.

Q. That is right. Now, you have stated that finned coils were old at that time, at the time Potter came into the field? A. They were.

Q. I know you might have in mind the Larkin patent. You may have something else in mind that

(Testimony of Norman S. Parker.)

you knew of in actual operation because of your extensive knowledge in the refrigeration field.

A. Well, I am familiar with the Larkin patent, but I have also seen other finned coils, of course.

Q. Long before, or at least before?

A. Before, shall we say.

Q. Yes, before Potter? A. That is right.

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Mr. Cuningham: If your Honor please, this all comes in under the alleged invalidity of the patent



(Testimony of Norman S. Parker.)

over the prior art. We have not gone into the prior art, and, as your Honor knows, that opens up eight or nine patents cited. I think we should not do that at this stage.

The Court: I think this whole line of interrogation is proper. Mr. Parker made an estimate of a reasonable royalty based upon the fact that this was a revolutionary device; that never before had these things been brought into the home, and I think that Mr. Byron has a right to interrogate him on the various elements about which he testified.

Mr. Cuninghame: I bow to your Honor's ruling.

The Court: It may be admitted. [865]

(Document, Larkin Patent No. 1,776,235, previously identified as Defendants' Exhibit 106 for identification, was received in evidence.)

Mr. Byron: I think you have stated—and if I am not right, you say so—I believe you have stated that the Larkin——

The Court: Just a minute, Mr. Byron. I want to say this, that we have a rule here, Mr. Ramsey, that when one attorney is interrogating a witness he and he alone conducts the proceedings, and no one interferes. Now both Mr. Cuninghame and you have violated that rule once, but I just call it to your attention because that is going to be the rule from now on; only one man on one witness on a side. Proceed.

Q. (By Mr. Byron): Mr. Parker, you have referred to the Larkin coil, and I do not know if

(Testimony of Norman S. Parker.)

you made the statement or not that the Larkin coil is the type of coil used in the Potter patent refrigerator. Is that correct?

A. Well, I have no information on that. You asked whether it was a Larkin coil or not. Of course, there are other finned coils than Larkin, but the Potter coil would have the characteristics of Larkin in that the tubing passes through a series of fins.

Q. Yes. Now, in connection with that thought that you suggested on characteristics, I would like to read from the [866] Larkin patent. That patent is No. 1,776,235, and I wish to read from Page 2 of that patent beginning in Line 113.

The Court: Mr. Parker does not have a copy.

Mr. Cunningham: Neither do we, your Honor. We came up unprepared for this part of the defendants' case.

Mr. Byron: I think I can accommodate you. (Copies of Larkin patent presented to opposing counsel and the witness.)

Q. Do you have, Mr. Parker, Page 2?

A. Page 2.

Q. Beginning Line 113. That is in the second column. A. Yes.

Q. Now, in reading this I have in mind, of course, the characteristics of the finned coil, the operation of it, the purpose of it, the function of it, and the results of it.

“With the present-type coil properly arranged in the casing a temperature of 36 degrees F. can be

(Testimony of Norman S. Parker.)

maintained in the casing without frosting the plates at all and consequently without freezing or dehydrating any of the contents of the casing whatever. A very large surface area and rapid heat absorption of the aluminum plates all lead to a rapid temperature drop when the unit is in operation. Since this temperature drop is less than two degrees, it follows that each refrigerating [867] cycle of operation must be of very short duration and consequently must greatly reduce the amount of power required to maintain it in operation. Whatever little moisture may be picked up from the air in the casing is deposited on the plates, and because of the large surface area on these plates must, when condensed, be spread on such plates in a very thin film which is constantly being removed by the circulating air and returned to the air and meats from which it was taken. Where below-freezing temperature must be maintained on the plates as in prior coolers it is obvious that any moisture taken from the meats becomes condensed and frozen on the plates and cannot be removed therefrom by the circulating air. In this case the meats not only lose weight which cannot be recovered but also deteriorate greatly in quality. This maintenance of humidity is only one of the most important results flowing from the use of cooling coils designed as disclosed herein."

That tells the entire story of the finned coils in a cooling chamber, does it not, the dehydration, non-

(Testimony of Norman S. Parker.)

dehydration, and the preservation of foods at the proper [868] temperature?

Mr. Cuningham: Objection; it tells what it tells. I think it calls for a conclusion.

The Court: This is cross-examination.

Mr. Byron: He ought to know. He is an expert.

Mr. Cuningham: Also, your Honor, to finish my objection, I object to it as not prior art in this sense. It is more than two years prior to the filing date of the patent in suit. This issued on September 16, 1930. The filing date is February, 1931. It is less than six months prior.

The Court: But it was filed June 28, 1928.

Mr. Cuningham: I know that, sir, but it is not prior art. It was not issued more than two years prior, and I object to it, move to strike it, strike the question.

The Court: The objection is overruled. The witness may answer the question.

The Witness: Well, the quotation you read from the patent discloses that Larkin had the idea when this patent——

The Court: I did not hear that last part.

The Witness: ——discloses that Larkin in this patent had the idea or taught the idea that a finned coil can be used in a refrigerated space to cool without frosting and therefore without taking moisture out of the food. He shows the structure in Figure 1 of that patent, apparently a showcase full of meat. [869]

Q. (By Mr. Byron): It would also prevent



(Testimony of Norman S. Parker.)

discoloration, at least to the extent that would be true in the Potter arrangement; is that correct?

A. Discoloration?

Q. Discoloration of meats. There has been testimony that meats discolor.

Mr. Cuninghame: Objection, your Honor. I think there is no such testimony. I think it is a misquotation.

The Court: He is making that claim.

Mr. Byron: The Bommer deposition.

The Witness: I do not know anything about discoloration of meat.

Q. (By Mr. Byron): All right. Well, it will tend to improve food in better condition by virtue of the fact that the food is not dehydrated; is that right? A. Yes.

The Court: That is what Larkin claims.

Mr. Byron: Larkin tells the story here, yes; that is right.

The Court: But Mr. Parker is not a food expert. I do not think, Mr. Parker, you are vouching for it; you are just saying that is what the patent reads?

The Witness: I am saying that is what the patent says.

Q. (By Mr. Byron): And as a result of your own experience in your home—you have spoken about that in your direct [870] examination—you know that to be true, do you, as a result of your experience? A. That meat keeps better?

Q. No, that food is not dehydrated by virtue of



(Testimony of Norman S. Parker.)

the fact—for the same reason as disclosed in the Larkin patent?

A. Well, I am not fortunate enough to possess an Admiral, but I am sure that that is correct, that your food is better if not dehydrated by a freezing coil.

Q. Well, now, Admiral does not have any finned coils in the cooling chamber, does it? A. No.

Q. Then you are not talking about the Admiral; you are talking about some other——

A. No, I just said I was not lucky enough to have a non-frosting box.

Q. You were able to find a finned coil structure in Admiral? That is what I understood.

A. No, sir; I did not.

Q. Okeh, just so we understand each other.

Now, then, I would like to go to Page 5 of the Larkin patent beginning in Line 87, and Larkin says about his coil:

“Where the casings are properly installed with five-eighths-inch copper tubing spaced apart at three and a half inches between centers through [871] aluminum fins having a surface area equal to the outside surface area of the casing a temperature of 36 degrees F. can be maintained at the center of the casing by maintaining a temperature of 34 degrees F. on the face of the cooling units. Since this is above freezing point, this temperature of 36 degrees can be maintained without frosting the fins. It is obvious, too, that any moisture condensed on the fins will be removed practically as fast as

(Testimony of Norman S. Parker.)

formed by the air circulating through the units. Hence this moisture, because of the large condensing area of the fin, be formed in exceedingly thin film which can be readily absorbed by the circulating air."

That is a further statement to the same effect, a little more detailed in some respects, is that correct?      A. Yes. [872]

Mr. Cuninghame: May my objection be continued?

The Court: You may have your objection to this whole line of interrogation, Mr. Cuninghame.

Q. (By Mr. Byron): Now, just a word or two about insulation. The lower the temperature it is desired to maintain in the refrigerating compartment the more insulation material would be used, would it not?      A. Yes.

Q. Now there is another angle to that also, and in that connection I would like to refer to the Anderson patent. The larger the surface exposure of the cooling compartment the greater will be the leakage of air from the outside to the inside, is that correct?      A. Leakage of air?

Q. I mean the temperature, heat.

A. Well, you're getting beyond my knowledge. You mean that if you take a unit of area of the outside the more units of area you have the more heat can pass through?

Q. That's right.      A. Like——

Q. Say, for example, if this unit is one foot and the compartment was only that high (indi-

(Testimony of Norman S. Parker.)

cating), you would get a certain amount of heat leakage, and if you had two units you would get an increased amount of heat leakage, and three units, four units, five units, the heat leakage would increase that much [873] more, would it not?

A. Not heat leakage per unit, but heat leakage per total area.

Q. The greater effect would be the leakage on the inside compartment?

A. Well, you're getting beyond my information, but it sounds logical.

Q. It is the same old thing as using blankets on your bed, if you desire to keep the heat or cold from transferring through the covers you merely increase the number of blankets for insulation, do you not?      A. Well, I do.

Mr. Cuningham: I thought we were going——

The Court: Well, then, you can talk for Mr.—no objection to that. It's just that not more than one can interrogate the witness. They can talk to cocounsel.

Q. (By Mr. Byron): Now, referring to the Larkin patent again, 1,776,235, I wish to call attention to the second part of that letters patent, beginning in Line 4, "This invention relates to refrigeration in general and particularly to a cooling unit adapted for use in display case refrigerators, refrigerator cars, storage rooms, household refrigerators, et cetera." So he envisioned household refrigerators as well as the other elements?

Mr. Cuningham: Objection, your Honor. [874]

(Testimony of Norman S. Parker.)

The Court: I think that's a little argumentative, too. The patent is in evidence and you may read any portion of that to the jury in your argument.

Q. (By Mr. Byron): Now, Mr. Parker, Bronaugh and Potter regarded this feature of fins as an essential feature to the successful operation of their refrigerator, did they not?

Mr. Cuninghame: Objection, your Honor.

The Court: Objection will be overruled. Mr. Parker is your patent expert.

Mr. Cuninghame: Your Honor, he has asked what they regarded it as. He is asking for the state of the individual's mind. He doesn't—I object to the form of the question.

The Court: Objection overruled. Go ahead.

The Witness: Can I have that question again?

Mr. Byron: Would you read the question, please?

(Last question read.)

The Witness: No, I don't think so. Fins aren't mentioned in the patent.

Mr. Byron: Well, I know that is sad for the patent. I was going to get to that.

The Court: All right.

Mr. Cuninghame: I move to strike that.

The Court: Mr. Byron——

Mr. Byron: Yes, I appreciate—I beg your pardon.

The Court: All right. Let's do the arguing during the [875] argument period and the interrogation during the interrogation period.



(Testimony of Norman S. Parker.)

Mr. Byron: I know Mr. Parker so well that I sort of forget I am not in his office. I am forgetting where I am, and I beg your pardon.

Q. Now, in the Potter refrigerator, then, as distinguished from the patent in the commercial refrigerator which he made, he used finned coils for accomplishing the result he was looking for; that is, preventing frosting of the coil and preventing dehydration of the food. That's correct, isn't it?

A. Correct.

Q. Now then, getting to the point which you mentioned, Bronaugh and Potter nowhere in their patent specification mentioned the word "finned," do they?      A. They do not.

Q. And that being true, then that specification does not give a full, clear, concise, and in exact terms in describing this so-called finned coil which you claim is shown at 25 and Figure 2 of the Potter patent?

The Court: Don't answer that.

Mr. Cunningham: I object, your Honor. It's an ultimate question for the jury.

The Court: Yes. I think I have explained to the jury that Mr. Parker is a different kind of a witness than we have had so far. He can answer the ultimate question. You don't [876] have to believe him but he can give his opinion, because he is a patent expert. You may answer the question, Mr. Parker.

The Witness: Can I have it again?



(Testimony of Norman S. Parker.)

Mr. Byron: Would you read the question, please?

(Last question read.)

The Witness: Well, the specification calls for a structure——

Mr. Byron: Now, wait a minute. I asked a very specific question about fins.

Mr. Cuninghame: May the witness answer, your Honor?

The Court: No, wait a minute. I think he has to answer the question.

You will have to read the question this time loudly enough so I can hear it.

(Last question read.)

The Witness: It does not describe a finned coil. It shows one in the drawing.

Q. (By Mr. Byron): Now, wait a minute. I limit that question to the specification, the description in the specification. I am entitled to an answer on that.

The Court: Yes.

The Witness: It does not describe a finned coil in the specification.

Mr. Byron: For any purpose whatsoever.

A. Yes.

Q. For any purpose whatsoever? [877]

A. Correct.

Q. Then as a patent expert, Mr. Parker, you knew that the specification of the patent in suit does not meet the requirements of the statute, is

(Testimony of Norman S. Parker.)

that correct?           A. No.

Q. It does not meet it?

A. No, that is not correct. It does, yes, in my opinion.

Q. Now, are you saying that the description of the finned coil—you say there is no mention of the finned coil in the specification?

A. That's correct.

Q. Well, then, there can be no full, clear, concise description of the finned coil or—in exact terms?

A. That's correct. There is no description of the finned coil.

The Court: Well, I think that what Mr. Cunningham is getting on his feet to object for is to the argument between——

Mr. Cunningham: That's correct, your Honor.

The Court: ——between you——

Mr. Cunningham: And I object.

The Court: ——between you and Mr. Parker, and I think it would be perfectly all right to ask him questions, but try to avoid argument.

Mr. Byron: Well, I think Mr. Parker understands what I mean there sufficiently so that he might give an answer. [878]

The Court: It's five minutes of eleven now, Mr. Byron, and I think this is a propitious time to take a recess for about ten minutes.

Mr. Byron: Thank you.

The Court: Ten-minute recess.

(Recess.)

(Testimony of Norman S. Parker.)

The Court: Go ahead, Mr. Byron.

Q. (By Mr. Byron): Mr. Parker, is there such a thing as a nonfrosting coil and a frosting coil?

A. You mean in the sense that the coil is inherently frosting or nonfrosting?

Q. Well, in any sense you desire to answer that.

A. No. I think you would have to use those terms in relation to the situation of the coil in a particular assemblage of parts.

Q. I think that's right. You can cause a coil to frost or you can treat the coil so it will not frost, is that correct?      A. That's correct.

Q. And as long as we are on that subject, it's a little bit out of my line here for the moment, but let's take the function of the expansion valve 23 in Potter and the expansion valve 33 in Anderson, or either one. The function of that expansion valve is to control the flow of liquid refrigerant from the high pressure side to the low pressure side, is that correct?      A. That's true. [879]

Q. And when that liquid refrigerant passes through the valve into the freezing coil at the entrance the liquid refrigerant evaporates, and in so doing absorbs heat from the freezing compartment. That's correct, isn't it?      A. Right.

Q. Then that liquid refrigerant, if it has not all been used up in the freezing coil, passes on to the cooling coil in the cooling compartment, is that correct?      A. Bronaugh and Potter?

Q. In both.

(Testimony of Norman S. Parker.)

A. Bronaugh and Potter say so. I would assume it's correct.

Q. Well, now, when that liquid refrigerant passes from the freezing coil into the cooling coil in the cooling compartment of Bronaugh and Potter patent in suit, I believe there is some frost formed at the entrance?

A. At the entrance, so the patent says, there may be slight frost formation where the coil enters the compartment.

Q. Yes. Now then, we have showed that with a given setting of the expansion valve. Now, let us open the valve a little wider. Then we get an increased flow of liquid refrigerant, do we not?

A. You would.

Q. And under those circumstances it's quite possible that the liquid refrigerant would go further in the cooling coil, is that correct? [880]

A. I would think so.

Q. And the further that goes in the cooling coil before evaporating, the greater the tendency will be toward frosting?      A. I would think so.

Q. And you could supply enough liquid refrigerant by opening the expansion valve far enough to have a liquid refrigerant passing substantially through the cooling coil in the cooling compartment, could you not?

A. Well, I have never had any experimental experience with it, but I would think that was the case.

(Testimony of Norman S. Parker.)

Q. And in such a case you would get a frosting on the coil, would you not?

A. I think you could.

Q. Think you could, yes. So that the frosting or nonfrosting of a coil is a function controlled by the expansion valve, is that correct?

A. Well, by the expansion valve plus the general capacity of the system. I don't know that that would be the sole factor.

Q. Well, assuming a constant capacity.

A. I would think so. I haven't made any tests, of course.

Q. That same thing would be true in the Anderson arrangement also, wouldn't it?

A. Well, I am not sure. Could you ask me—I want to make sure that I understand the [881] question.

Q. All I have in mind is this: In Anderson if you increase the opening of the expansion valve 33 to the extent that you get liquid refrigerant passing through the liquid coil, and then passing through a substantial part of the coil 40, you would get an increased frosting? A. I would think so, yes.

Q. Same as you would in Potter, correct?

A. Yes.

Q. Well now, let us go from that extreme back to another extreme. Let us close the expansion valve 23 in Potter, 33 in Anderson, so that you get a relatively small amount of liquid refrigerant in the cooling coil. What would be the result?



(Testimony of Norman S. Parker.)

A. Well, that's—are you talking about both those structures?

Q. Yes; both of them. You can take either one.

A. Let me have the question read.

Mr. Byron: I will reframe the question.

Q. Looking at Plaintiff's Exhibit 16-A of the drawings of the patent in suit, assume that the expansion valve 23 is opened an amount whereby a certain amount of liquid refrigerant passes up into the cooling coil 25. Now, under those circumstances, if we close the expansion valve 23 somewhat, what will be the result?

A. You would have less refrigerant going for evaporation to the coil 25; therefore, less abstraction of heat. [882]

Q. And if the valve—expansion valve 23 were opened only to the extent that all of the liquid refrigerant were transformed to a vapor in the freezing coil 22, would there be any effect in the cooling coil 25 for abstracting heat from the cooling chamber 14?

A. Well, it certainly would if all of the refrigerant is evaporated in the coil 22 so that no liquid passes to the coil 25. Then there could not be any abstraction of heat by actual evaporation. How much heat abstracts may be from the mere circulation of the refrigerant, I wouldn't know.

Q. Well, if the refrigerant were all transformed into a vapor in the refrigerating coil 22, and you had nothing but the vapor passing through the

(Testimony of Norman S. Parker.)

cooling coil 25, would you get any cooling effect in the cooling chamber?

A. I frankly don't know because I don't know what the temperature of the vapor would be.

Q. Under those circumstances would you get any frosting of the coil in the Potter arrangement?

A. No—of the upper coil?

Q. Yes. A. No, you certainly would not.

Q. And would you get any in the cooling coil 40 of the Anderson patent?

A. If no refrigerant entered the Anderson upper coil to evaporate, I do not see how you could get any frosting on it. [883]

Q. No liquid refrigerant?

A. I mean no liquid refrigerant.

Q. That's right. So they would be the same in that respect? A. Yes.

Q. You nodded your head. Did you answer?

The Court: Yes, he has answered.

Mr. Byron: I see.

The Witness: I thought I answered.

Q. (By Mr. Byron): I assume, of course, you have considered the file history of the Potter-Bronaugh patent?

A. Yes, I have gone through it.

Q. And what is the exhibit number?

Mr. Ramsey: Defendants' Exhibit 101.

Q. (By Mr. Byron): Defendants' Exhibit 101 is the file wrapper of the original Bronaugh and Potter patent 2,056,165, and Defendants' Exhibit 102 is the file wrapper of the Reissue Patent 23,058.

(Testimony of Norman S. Parker.)

The Court: Get the two file wrappers out, the original, and the reissue.

Mr. Byron: And I offer those in evidence at this time.

Mr. Cuninghame: No objection, your Honor.

The Court: I think they are in, aren't they?

Mr. Byron: I think they are. They were before, but I want to make sure of them here.

The Court: The original and reissue, both of them, give them to Mr. Parker, will you? [884]

Mr. Cuninghame: Your Honor, it seems appropriate at this time to ask what the purpose is of these exhibits, the file wrappers. May we have a statement from our adversary as to the purpose?

The Court: The reissue patent is the crux of this lawsuit. If you did not have that in evidence, you could not maintain your lawsuit.

Mr. Cuninghame: Your Honor, I think I did not make myself clear. I would like to know the purpose of offering this bulky patent on both patents, the original and the reissue. Why does the defendant wish to have it in?

The Court: Do you want to tell him why you want it in?

Mr. Byron: Yes; to cross-examine Mr. Parker to get at what the alleged invention is here, what Bronaugh and Potter attempted to get and what they thought was their invention. I do not want to make an argument here before the jury.

The Court: Go ahead.

Q. (By Mr. Byron): Will you please refer to

(Testimony of Norman S. Parker.)

the page in that file history, Defendants' Exhibit 101.

The Court: You mean all the claims that were canceled?

Mr. Byron: I want to refer to a few of those claims.

The Court: Very well.

Q. (By Mr. Byron): Do you have that place, Mr. Parker? [885] A. Yes, I have.

Q. I wish to read to you Claim 1, the original Claim 1 which was submitted by Bronaugh and Potter in their patent application to indicate, to show what they regarded at that time as their invention. Now this is Claim 1. I think I would like to do a little pointing. I am starting over again now, Claim 1:

“A refrigerator having a freezing compartment (indicating on drawing) and a cooling compartment thermally separated from said freezing compartment.”

Now, that refers just to a refrigerator having a freezing compartment and a cooling compartment thermally separated; is that correct?

A. Correct.

Mr. Cuninghame: Your Honor, I object to the form of the question as to what they thought was their invention. I will admit the claim.

Mr. Byron: That forces me to say that when Bronaugh and Potter, like any other applicant or applicants, file a patent application in the patent office they take an oath that they are defining their



(Testimony of Norman S. Parker.)

invention in these claims, what they regard to be new and patentable. If that is not what they meant as their invention, then they were taking a false oath, and I do not believe they were. [886]

The Court: I think what Mr. Cuningham is objecting to is the fact that all of these claims which you propose to read on Page 8 were rejected by the examiner as not being any invention.

Mr. Byron: That is right.

The Court: Is that right?

Mr. Cuningham: That is correct, sir; that objection was acquiesced in.

Mr. Byron: I was rather anxious that the jury should know just exactly what was rejected, and the acquiescence—what is your invention.

Mr. Cuningham: Well, if your Honor please, it is all in the case in the best form possible. Why ask Mr. Parker about it? He cannot improve on the record.

The Court: Of course, Mr. Parker is an expert, and he can do what other people cannot do, and that is he can explain a patent. If the file history is important in connection with some of the claims that have been granted, then the examination is proper. I want to know then from Mr. Byron, do you contend that the rejected claims limit the claims that were allowed?

Mr. Byron: What it does is to show what these patentees admitted was not their invention, and then we get into broader claims which were rejected and canceled, and now they are putting an interpre-



(Testimony of Norman S. Parker.)

tation on the new claims in this case [887] giving an interpretation of the same scope of some of the canceled claims, and there is file wrapper estoppel.

The Court: Have you pleaded file wrapper estoppel?

Mr. Ramsey: Yes.

Mr. Cunningham: I fail to see how Mr. Parker can do anything about that. The claims are in. They are all cleared.

Mr. Byron: He is contending infringement here. That goes into the scope.

The Court: Do you have another subject matter to go into now besides the file wrapper, and then we can look at the questions in the whole situation during the noon recess. Do you have anything to carry you through on Mr. Parker until noon?

Mr. Byron: Yes, but there is a sequence here that I would like to kind of follow. I will see what I can do.

The Court: How long will this take you to go through the file wrapper?

Mr. Byron: Oh, I suppose what I am going to say, probably a half-hour.

The Court: On the file wrapper alone?

Mr. Byron: Well, the file wrapper and related matters. I can go on.

The Court: Go ahead.

Mr. Byron: I will tell you: I will promise to cut it [888] short. I will do that.

The Court: When?

Mr. Byron: Right now.

(Testimony of Norman S. Parker.)

Q. Before I get further into the file wrapper, I might ask you a few questions somewhat related.

Do you regard—or Potter regards the expansion valve 23 as an essential element in the operation of his refrigerator, doesn't he?

A. That is an equivalent, something to drop the pressure.

Q. Well, let us just stick to his structure now, the one shown here in suit. He regards that expansion valve 23 as an essential element in the operation of his device?

A. Yes, sir.

Mr. Cuninghame: I object to that "regards," your Honor.

Q. (By Mr. Byron): Well, it is an essential element, then, is it?

The Witness: Some means for getting the pressure drop at that point is essential.

Q. And the thermostat 31 in Potter's arrangement is an essential element, is it not?

A. He so regarded it.

Q. On that connection, I wish to call your attention to Page 2 of the Potter reissue patent in suit, beginning in Line 72. I wish to read the paragraph, about 15 lines.

"While the thermostat 31 (indicating on [889] drawing) controls the temperature in compartment 14 (indicating on drawing) the setting of the expansion valve 23 (indicating on drawing) controls the temperature of the compartments 12 and 13. As the expansion valve is adjusted to restrict the discharge of refrigerant, the pressure differential in

(Testimony of Norman S. Parker.)

the refrigerant circuit is increased, lowering the temperature of the coil 22 and that of compartments 12 and 13, until they reach their respective minima corresponding to the valve setting. The refrigerant will be completely vaporized in coil 22 until the temperatures of the compartments near said minima, when some of the refrigerant will reach the coil 25 in liquid form, and, by vaporizing therein, will cool compartment 14. Thus, by our system the compartments 12 and 13 must first be cooled to minima fixed by the setting of the expansion valve before compartment 14 can be cooled to a minimum set by the thermostat. This arrangement whereby one temperature is controlled by a thermostat and another by an expansion valve is a novel feature of our invention."

Now, I think you have stated before, but let us make certain about it, the thermostat in the cooling compartment 6 of Anderson will control the temperature of that [890] cooling compartment 6 in Anderson, will it not?           A. Correct.

Q. And the expansion valve 33 of Anderson will control the temperature in the freezing chamber 7; that is correct, isn't it?

A. I believe that is correct.

Q. Well, then, that is not a novel feature, is it?

A. No.

Q. To Bronaugh and Potter?

A. I would not think so.

Q. I would like to go to this file wrapper again, Defendants' Exhibit—

(Testimony of Norman S. Parker.)

The Court: Go ahead, Mr. Byron. I have thought it over, and I have come to the conclusion that it is proper cross-examination. I am not going to limit you, and, Mr. Cuningham, you may have an exception to this whole line of interrogation.

Mr. Cuningham: Thank you, your Honor.

Q. (By Mr. Byron): Your attention is invited to Page 13 of the file wrapper, and that paper is an action by the Patent Office which rejects all of the original claims on the Davenport patent, 1,731,711; is that correct? A. Yes.

The Court: Are you going to show the Davenport patent?

Mr. Byron: Yes. [891]

(Discussion off the record.)

Q. (By Mr. Byron): You might turn to the drawing, or if you like to see the drawing, Mr. Parker, the drawing here?

The Witness: Is it 1,731,711?

Mr. Byron: That is right.

A. I have it right in front of me.

Q. Davenport shows a freezing compartment C, does he not? A. Yes.

Q. And he shows a cooling compartment B, does he not?

A. Yes, he calls it a food chamber.

Q. Well, it is a cooling compartment, isn't it?

A. I think so.

Q. That cooling compartment has an evaporator 5, has it not? A. Yes.

(Testimony of Norman S. Parker.)

Q. That evaporator is in the form of a hollow wall, is it not, 5? In other words, two spaced sheets of metal between which a liquid refrigerant passes?

A. Yes. You will excuse me if I check with the patent as I answer your questions.

Q. Oh, certainly. Take your time. It is perfectly proper.

There is an evaporator 4 for the freezer, is there not? A. Yes.

Q. The evaporator 4 and the evaporator 5, he says the [892] evaporator 4 in the freezing compartment and the evaporator 5 in the cooling compartment are connected in series. A. Yes.

Q. And the evaporated liquid which is then vapor passes from the cooling compartment of the evaporator over to the condenser compressor set, does it not? A. Yes.

Q. Then we have the condenser shown at 11; right? A. Yes.

Q. Where the vapor is changed into liquid refrigerant again so that it can pass through the regular cycle? A. That is correct.

Q. Your attention is called to Page 15 of the file wrapper of the original patent, Defendant's Exhibit 101, in which Potter and Bronaugh make these remarks. We will go back to Page 14 to make a connected story. Now bear in mind that this Davenport patent has been cited in the application of the original Potter application, and the claims rejected on the patent. In an argument among other things Potter and Bronaugh say, "In the



(Testimony of Norman S. Parker.)

first place, they have provided three kinds of compartments—" That is to say, Potter and Bronaugh have.

"In the first place, they have provided three kinds of compartments, No. 14 (indicating on drawing) which is a cooling compartment and [893] not a freezing compartment, No. 13 which is a freezing compartment in which are placed nonvolatile food-stuffs, and the last, a water-freezing compartment 12 in which only as much frost can form as results from water evaporation. In the compartment 13, which is separated therefrom, the temperature is so low that the frost is in the form of a white powder, and it is impossible for this ever again to go to the water-freezing compartment." [894]

Q. (By Mr. Byron): Now, this point, continuing the quotes:

"In the compartment 14 there is condensation but practically no frost and if it does form it is caught in the collector 28 and transferred to the receptacle 30 after which it is never again frozen."

Mr. Cuninghame: I object, your Honor. This is exactly what I was afraid of. I was afraid we would go into these endless arguments of the attorneys, and this is not part of our case, it's not within the scope of the direct, and I think, furthermore, it's incompetent to prove anything in the case under—in the defendants' case, and I object to it and move to strike it.

Mr. Byron: Among other things, your Honor, it shows that Potter and Bronaugh recognized the

(Testimony of Norman S. Parker.)

fact that there was frost in their chamber, and I want to talk a little bit about that and about this condensation and dripping.

The Court: Well, I think it all is applicable and relevant in connection with plaintiff's case. I thought it was being introduced for a little different purpose, but I can see that the purpose for which it is being used is perfectly proper, and the objection is overruled. You don't have to object any more, Mr. Cunningham, because I will give you an objection to this whole line.

Mr. Cunningham: Thank you, your Honor. [895]

Q. (By Mr. Byron): Now, referring to the Potter arrangement, why is it necessary to have this drain 28 and this bottle for collecting water in the patent in suit?

A. The drain is to catch moisture which may drop from the fins and to put it in the container which can be removed.

Q. And all of that moisture which goes in the form of water eventually into that bottle 30 comes out of the air in the cooling compartment, and it comes out of the food in the cooling compartment, does it not?

A. One or the other or both.

Q. Right. Now, in that same connection I will refer to the Anderson patent which is in evidence, and your attention is directed to page 2. Do you have a copy?

A. I will see if it's in this book. Yes.

Q. Beginning line 35, and referring to the An-

(Testimony of Norman S. Parker.)

derson patent, Plaintiff's Exhibit 16-B, now, page 2 of the Anderson, beginning on line 35 there is:

“A removing guard or screen netting (indicating) extends in front of the back member of the coil 40 (indicating) as at 46 and inside of the side members of the coil as at 45 (indicating) to prevent any food vessel from being placed where dripping from the coil would fall into such vessel.”

Now, that shows that there is dripping also from the coils on the Anderson arrangement, is that correct? [896]           A. Correct.

Q. And that would be the same, then, both in the Anderson and in the Potter and Bronaugh patent in suit?

A. That I don't believe I would be able to answer.

Q. Insofar as the collecting of water and the dripping of water is concerned.

A. In both of them at some stage there is formation of—or, rather, there is moisture on the coils which drips. That's all I can get from that.

Q. And that comes from the air in the cooling compartment and from the food in the cooling compartment?           A. Correct.

Q. Now, then, your attention is directed to page 25 of the file wrapper in Defendants' Exhibit 101 thereby an amendment—or Claims 15, 16, and 17, which were added to the original specification. That is correct, is it not?           A. Yes.

Q. I would like to read just one of those claims. 15:

(Testimony of Norman S. Parker.)

“A refrigerator comprising a cabinet formed with a dry cold storage chamber and a relatively moist and warm cooling chamber thermally insulated from the cold storage chamber, a freezing coil in the cold storage chamber, a nonfrosting coil in the cooling chamber (indicating), a line directly connecting said coil (indicating) and a heat pumping [897] unit (indicating) for drawing gassified refrigerant from the nonfrosting coil (indicating) and returning the same as a liquid into the freezing coil (indicating).”

If you will observe these Claims 15, 16, and 17, which are added to the application on December 2, 1932—that is the date of the application, isn't it, or the amendment?      A. Right.

Q. That is the first time that any claims have been inserted on this nonfrosting idea. That's correct, is it not?

A. I think so, without reading it.

Q. Now, that Claim 15 does refer to a nonfrosting coil and you and I have agreed that there is no such thing as a nonfrosting coil per se?

A. There is no such thing as a coil which under all circumstances will be nonfrosting.

Q. It depends on how it's used?

A. On how it's used and in what environment it's used.

Q. Now, Claims 15 and 16 were later cancelled, were they not?

A. I believe so. They are so marked on my copy.

Q. Now, for the moment I want to return to the



(Testimony of Norman S. Parker.)

Larkin patent and what I have read rather extensively to you from the Larkin patent about the finned coils and how they prevent dehydration of the food and deterioration of the food.

Now, here is an element of each of the claims in [898] suit and I want to ask you whether or not Larkin doesn't disclose that element.

Mr. Cuninghame: Objection, your Honor. You can't anticipate element by element a combination claim.

The Court: Objection overruled. This is cross-examination.

Q. (By Mr. Byron): I am referring to that element which reads as follows:

"A cooling refrigerant coil or expander having heat-conducting surfaces within the cooling compartment and constructed and arranged to maintain its heat-conducting surfaces at a temperature above 32 degrees F. while withdrawing heat from the said compartment to maintain the air in said cooling compartment at a substantially stable temperature above 32 degrees F."

Now, that element describes the Larkin arrangement, does it not? A. I believe it does.

Q. In the exhibits here in court of the Potter refrigerators—could I have this out of the way?

(Whereupon the exhibits were moved.)

I refer first to the Plaintiff's Exhibit 11-A. There is a shield in the rear upper part of the cooling compartment, is there not?



(Testimony of Norman S. Parker.)

A. Yes. [899]

Q. And that shield covers the finned coil. Right?

A. Yes.

Q. And that shield covers the finned coils in such a way so completely that you cannot tell if the coils or the fins frost or not, correct?

A. Not without taking the shield off.

Q. Well, the shield, when it's in place, you cannot tell? A. That's correct.

Q. And that shield is fastened in there permanently, is it not? A. I don't know.

Q. Well, come and find out.

Mr. Cuninghame: Well, I object, your Honor.

Mr. Byron: Well, this means something.

The Court: Yes, I know.

The Witness: There are four screws on it.

Q. (By Mr. Byron): Rather permanently fixed?

A. Well, you could take it off if you wanted to. I would suspect it's not meant to be taken out in ordinary use.

Q. Well, could you or anybody else opening that door tell whether or not the cooling coil in that cooling compartment is frosted?

A. No, I don't think so; not by merely looking.

Q. Well, it would take quite an inspection?

A. No, sir; you can put your finger around the end of the [900] shield and feel whether it's frosted or not.

Q. And who would do that?

Mr. Cuninghame: I would object.

(Testimony of Norman S. Parker.)

Q. (By Mr. Byron): Well, I would like to know.

The Witness: I did it once.

Q. Well, when you are making an inspection for it. A. In an operating machine, yes.

The Court: I think you have got enough in here to make your argument.

Mr. Byron: Well, I am going to another phase of the examination, your Honor, and shall I start now or——

The Court: Well, no, I think that we are going to quit now and we will start at—I was going to recess until 2:00 o'clock, but in view of the fact we are letting them out five minutes early we will start 15 minutes early at 1:45.

(Whereupon the jury was excused for the noon recess.)

The Court: Are you going into the file wrapper any more?

Mr. Byron: Well, if I do it will be very briefly. Very briefly.

The Court: I wanted to tell you this, that I stopped you when you were on page 8 of the original claim after you read Claim No. 1, but on reconsideration I came to the conclusion that you could with propriety interrogate the witness on the other claims, original claims, and I don't want to [901] limit you except that I hope you won't read all the 14 original claims. But you can take up two or three of them.

(Testimony of Norman S. Parker.)

Mr. Byron: I intended to read three, your Honor, but I will let it go at one.

The Court: You can read all 14 if you want, but I hope you won't.

Mr. Byron: All right.

The Court: Recess till 1:45.

(Thereupon, at 12:00 o'clock m., a recess was taken until 1:45 o'clock p.m.) [902]

### Afternoon Session

(At 1:45 o'clock p.m. the trial herein was resumed, pursuant to recess, and proceedings herein were had as follows:)

### NORMAN S. PARKER

a witness called in behalf of Plaintiff, thereupon resumed the stand and was further examined and testified as follows:

### Cross-Examination (Continued)

By Mr. Byron:

Q. Mr. Parker, in connection with your application of the claims of the patent in suit to the accused structure, the Admiral refrigerator, I wish to call attention first to an element that Claim 2—I think it is in all of the claims but illustrative anyhow in 2, that element which is a cooling refrigerant expander having heat-conducting surfaces within

(Testimony of Norman S. Parker.)

said cooling compartment. First, let us understand what is meant by expander. Is that the same as coil in this case?

A. Expander is any member in which a refrigerant, and to me the term includes the duct itself and whatever conducting surface it has which carry heat to the duct.

Q. Yes, and it is called variously a coil in this case, is it not, and an evaporating tube or an evaporator tube or an [903] evaporator?

A. That is right.

Q. Well, now, will you point out again in any drawing or in the accused devices, in the models, a cooling refrigerant expander having heat-conducting surfaces within said cooling compartment.

(Discussion off the record.)

The Witness: May I have that question read?

(Pending question read.)

The Witness: The duct portion of the cooling refrigerant expander I am pointing to—I believe it is the coil 102 on the transfer plate 104, and it is in close heat-conducting relation with the sleeve which is in the cooling compartment, the sleeve itself plus the what Mr. Morton described as the fins 70 and, I believe, 104, deliver the heat from the cooling compartment to the coil itself.

In other words, the coil has the heat-conductive surface which lines the storage space and from

(Testimony of Norman S. Parker.)

which the heat is abstracted by the refrigerant evaporated in the coil portion 102.

(Discussion off the record.)

Q. (By Mr. Byron): Referring to the Potter patent in suit, the cooling refrigerant expander having heat-conducting surfaces within the cooling compartment, and now I am referring to Plaintiff's Exhibit 16-A, that cooling refrigerant [904] expander is shown at 25, is it not?

A. Correct.

Q. And it is within the cooling chamber 14, is it not?      A. It is.

Q. And its heat-conducting surfaces are within chamber 14, are they not?

A. That is correct.

Q. Correct?      A. That is correct.

Q. Now, then, referring to the accused device, and you have said that a portion of the freezing coil which is attached to the primary transfer plate is a part of the cooling coil; is that correct?

A. I don't think I said it that way.

Q. Well, any way you like it; you say it again.

A. The so-called primary expander, if I remember the terms of Mr. Morton correctly in his patent, he said, was divided into two parts; one which is secured about the exterior of the sleeve of the freezing compartment, and the other of which was secured in heat-transfer relation with the primary transfer plate.

Q. In any event, that is one continuous coil for



(Testimony of Norman S. Parker.)

a freezing coil to be used in connection with the freezing compartment, is it not?

A. No, I would not say that. The part of a continuous [905] line of ducting or tubing, part of it abstracts heat from the freezing compartment, and part of it, that part in the transfer plate 104, abstracts heat from the cooling compartment, and that is why it is there.

Q. All of the freezing refrigerant, however, passes through the freezing coil attached to the primary transfer plate; is that not correct?

A. That is true.

Q. Now, then, that coil, the freezing coil, that portion of the freezing coil is not within the cooling compartment, is it—I say that portion of it.

A. Well, in the first place, I hesitate to call that a freezing coil because it is not in connection with the freezing compartment. It is within the insulation which surrounds the liner shown in Exhibit——

Q. Let's get it out here.

(A refrigerator box was brought before the jury.)

The Witness: The primary transfer plate which is secured below the freezing locker, the coil on the primary plate which takes heat from the moist cold compartment is on the exterior of the primary plate. and therefore it is on the exterior of the food storage container of the cooling compartment. It is, however, within the insulation which surrounds the

(Testimony of Norman S. Parker.)

compartment and is subjected to the same [906] conditions of temperature. Whether you say that the compartment begins inside of the locker or not, or this locker, rather, it is hard for me to see—to me everything that is within the refrigerated space surrounded by the insulation about the cooling compartment is within the cooling compartment.

Q. That is the very first question I asked you this morning, Mr. Parker, to get a definition. I thought I had.

Referring to Defendants' Exhibit 117, I am now placing my hand in this shell. That is the cooling compartment, is it not?

A. That is within the cooling compartment.

Q. That is the cooling compartment, is it not?

A. No.

Q. Where do you put vegetables, fruit and food generally to cool them?

A. Why, surely, it is part of the cooling compartment where you store vegetables, but that is not the only part of the cooling compartment. The cooling compartment includes everything within the insulation surrounding this sleeve.

Q. That is your position?

A. That is my position.

Q. But you do not put any food in the insulation for cooling purposes, do you?

A. You certainly do not. That is what this sleeve is for. [907]

Q. That is right. Now, then, freezing liquid refrigerant passes through this primary coil which

(Testimony of Norman S. Parker.)

goes to the freezing compartment, the outside of the freezing compartment; that is correct, isn't it?

A. Yes, that is correct.

Q. Now, then, that whole part of the coil, freezing coil, receives freezing refrigerant, does it not?

A. Well, it receives evaporating refrigerant.

Q. Well, in accordance with the terms that we are using in the patent of freezing refrigerant passing through a refrigerant coil, it all passes through that coil?

A. Yes, it does.

Q. That is your freezing refrigerant.

A. The refrigerant which comes up and about the freezing locker passes through that freezing coil.

Q. That is right, and that freezing coil takes a refrigerant which passes through the coil at about zero degrees Fahrenheit, doesn't it?

A. I couldn't tell you that.

Q. Well, it is for freezing purposes, isn't it?

A. I would so assume that it does.

Q. Well, you know that, don't you? If you are going to freeze food in the upper chamber, you have got to have a freezing refrigerant to do it?

A. Yes, I would say so. [908]

Q. Now, then, let us assume for a minute that your definition of the location of the freezing coil is correct—and I do not take that definition but just for the moment—the heat-conducting surfaces now—this would be a cooling coil, a portion of it, you say—you say it is a portion of the cooling coil?

(Testimony of Norman S. Parker.)

A. I do not remember precisely how I said it, but I think you are getting into an environment which would give information somewhat different than I want to give.

Q. I do not want you to give that, Mr. Parker.

A. What I said, I said that this part of the coil was a coil which took heat out of the moist cold compartment, and it took it through a heat-transfer surface in the moist cold compartment.

Q. That means just one thing to me, and that is that this is a refrigerating coil, a freezing coil in the primary circuit, then, is a part of the cooling circuit for the cooling compartment; is it not?

A. It is not connected in circuit with this so-called secondary system, but it is a part of the system which takes heat out of the moist cold compartment.

Q. Then it is a coil—that portion is a coil, a freezing coil for, acting as a cooling coil to take heat out of the main food compartment; is that correct?

A. That would be one way of saying it. That would not be [909] the way I would say it.

Q. You say it the way you want it.

A. I would say that this part of the primary coil which is not freezing anything adjacent at this point is not intended to freeze, is the means for abstracting heat from the moist cold compartment.

Q. Now we have got to start over again. You have agreed heretofore, I believe, that a freezing

(Testimony of Norman S. Parker.)

refrigerant passes through this portion of the freezing coil to go on and freeze material in the freezing compartment. Now you have agreed to that, have you not?

A. No, I have not agreed to that. What I have agreed to is that volatile refrigerant flows through this coil, can flow through this coil, and since it is connected in series will also flow through the coil which freezes material in the frozen food locker.

Q. Then that freezing refrigerant in that coil, the coil section is at least zero degrees, isn't it?

A. Well, I would be guessing on that, but I assume it is.

Q. It is far below 32 degrees?

A. Certainly.

Q. If you want to freeze, all right.

A. The refrigerant itself as it passes through that coil?

Q. Yes, is about zero degrees Fahrenheit?

A. I would expect so. [910]

Q. All right. Now, then, let us get back to this claim, a cooling refrigerant expander having heat-conducting surfaces within the cooling compartment, but disregard that phase of it for the moment—constructed and arranged to maintain its heat-conducting surfaces, that is the tube itself, the expander?

A. I do not accept that. The heat-conducting surfaces out of the expander are the surface of the liner, Exhibit 117. [911]



(Testimony of Norman S. Parker.)

Q. (By Mr. Byron): Well, now, let's see. Here is what the claim says—

A. Those are surfaces which abstract heat from the moist cold compartment.

Q. Well, that's quite an argument. Now, let me ask you a question. I am referring to the element of the claim here, "A cooling refrigerant expanded."

A. All right.

Q. Would you point it out here? "Having heat-conducting surfaces." Now, it has heat-conducting surfaces. It has them elsewhere, but it has them here?

A. Yes.

Q. All right. That's as far as I want to go. "Heat-conducting surfaces within said cooling compartment." Of course, they're not there, but let's forget that. And now, referring to the cooling refrigerant expander constructed and arranged to maintain its heat-conducting surfaces, that means the cooling refrigerant expander having its heat-conducting surfaces at a temperature above 32 degrees Fahrenheit. Now, you have agreed that the refrigerant passing through that coil is around zero degrees. That being true, how could the surfaces of this coil be above 32 degrees?

A. I don't find the language that you have been reading in that claim calling for the surfaces of the coil or duct itself being at 32 degrees. What it calls for are heat exchange [912] surfaces.

Q. That calls for that element "a cooling refrigerant expander," and you have agreed that that may be an evaporator or a coil. Now, a cooling

(Testimony of Norman S. Parker.)

refrigerant expander having heat-conducting surfaces within the cooling compartment and now the cooling refrigerant expander and constructed and arranged—is constructed and arranged to maintain its heat-conducting surfaces—these are heat-conducting surfaces, or a part of them—at a temperature above 32 degrees Fahrenheit. Now, I say, that in view of the fact that the volatile refrigerant passes through there as zero degrees Fahrenheit, this coil and the surfaces thereof will be below and far below 32 degrees Fahrenheit, correct?

A. No, I don't understand it. Well, perhaps I can clarify my position by saying that I think you are asking me all these questions on the assumption that the expander is limited to a section of pipe. To me the expander, term "expander" in those claims means that pipe plus whatever heat exchange surfaces are attached or connected to it.

Q. Well, I will take that definition for the moment, just as long as you say, as you have now, that this coil (indicating) associated with the primary transfer plate is a part of the cooling refrigerant expander. You have said that now?

A. You mean the coil on the primary plate?

Q. Well, the coil here through which the refrigerant is [913] passing for freezing in the upper chamber and cooling in the lower chamber.

A. Of course, you have two sets—two paths. What I am talking about is the coil which is actually primarily secured to the primary transfer plate.

Q. Is there a condition in the operation of this

(Testimony of Norman S. Parker.)

accused device when the freezing refrigerant passes through the coil attached to the primary plate and also passes through the coils around the freezing compartment?      A. Surely.

Q. O.K. Then under those conditions at that time the freezing refrigerant passing through that freezing coil is about zero degrees Fahrenheit, is it not?      A. It is, yes.

Q. Now, then, it is said, and you agreed, that that portion of the freezing coil attached to the primary transfer plate is a part of the cooling system for the cooling compartment.

A. That's correct.

Q. All right. Now, I am talking about that part. This is what the claim says: "A cooling refrigerant expander constructed and arranged to maintain its heat-conducting surfaces," and it has heat-conducting surfaces there (indicating)?      A. Yes.

Q. "To maintain it at a temperature above 32 degrees Fahrenheit." Now, that's an impossibility, is it not? [914]

A. That particular part of the expander does not have those characteristics.

Q. Thank you. Now, let us get back on the first part of that element of the claim, and I am referring back to this—and you can add to it as much as you want—"A cooling refrigerant expander having heat-conducting surfaces within (indicating) the cooling compartment." I would like to have you point that out.

(Testimony of Norman S. Parker.)

A. This freezer has surfaces and they are within the compartment.

Q. How is that possible?

A. Well, you could have two ways. In the first place, the heat from the interior of this compartment flows to and along these surfaces (indicating). They are in the compartment just as much as the face of these walls are in this room. So look at it another way: The space which is refrigerated within the structure is the space within the insulation and this liner here (indicating) is within the insulated area, and it is part, in my opinion, of the compartment.

Q. Well, I call it cooling compartment. A cooling compartment. And that is the compartment in which the food is placed for cooling purposes. That's correct, isn't it?

A. Well, that certainly——

The Court: Well, the man has disagreed with you.

Mr. Byron: What is that? [915]

The Court: Mr. Parker has a different definition.

Mr. Byron: I see.

The Court: And I think you have reached an impasse, and I think that point calls for expert testimony on your part. I don't see any useful purpose being served by continuing with him having one definition of a cooling compartment and you having a different one.



(Testimony of Norman S. Parker.)

Mr. Byron: Yes. Well, I would like to go just one step further, your Honor.

Q. I would like to have you trace out the connection between that portion of the freezing coil which you call a cooling coil and connect that to the cooling compartment some way or other.

A. What I call the cooling coil on the primary plate is put into heat-abstracting relationship with the locker—with the moist cold locker and a closely present primary transfer plate against the secondary transfer plate even with this perma gum between them to improve the heat transfer, and as Mr. Morton says in his patent, these plates can be described as fins and the second—the inner fin here in close heat transfer relation with the primary plate is further connected to the surface within the compartment.

Q. Well, now, wait a minute. We are going a little fast here.

Mr. Cunningham: Your Honor, I think he should be allowed [916] to finish his answer. He obviously hadn't finished.

The Court: Well, I was lost about a half hour ago. I haven't come back yet.

Mr. Byron: Well, if I interrupt you, Mr. Parker, you know I am sorry and I apologize. I always intend to be polite to you.

The Witness: I wasn't conscious of being interrupted. I am perfectly willing to have——

Mr. Byron: Thank you.

Q. Well, now, we have got the connection be-



(Testimony of Norman S. Parker.)

tween the primary transfer plate and what is known as the secondary transfer plate, you say, for extracting heat from the cooling compartment on the inside. Now, will you follow that heat-abstracting connection from this secondary plate?

A. That is the purpose of the system of secondary tubing which is a closed system with some refrigerant in it, which I believe I described on my direct examination and which has coils on the face of the front—front face of the secondary heat transfer plate on this exhibit, Defendants' Exhibit 17, which——

Q. 117?            A. 117.

Q. All right. Now, you have got the coil of the secondary system connected to the secondary transfer plate. Now, will you follow through, telling us where these cooling coils go [917] then?

A. The cooling coils include a structure in which there is a down pipe to the bottom of the back of this sleeve, and there is a little well, you might say, in the bottom of that where liquid refrigerant from the secondary system can gather. Then——

Q. I would suggest now, if you don't mind, that you might refer to your Exhibit 8-A-1. It may be helpful to you.

The Witness: We have a little trap or bend here marked, which I marked 74, and this down pipe will deliver refrigerant to it under conditions when the liquid in the refrigerant of this—rather, when the refrigerant of this secondary circuit is in liquid form. Then the liquid can become vaporized

(Testimony of Norman S. Parker.)

and rise in these pipes to where it enters the coil which is in the heat transfer relation with the secondary plate, and it can then be cooled by the passage of refrigerant through the coil 102 on the primary plate and as it becomes cool it may become liquefied and flow down. So you have a closed circuit there with a certain amount of refrigerant in it, and a body of refrigerant, however, which is in that circuit and never travels out of it. There is no liquid or fluid connection between the secondary circuit and the primary circuit.

Q. There is what?

A. No fluid connection. There is only a heat transfer connection between the two plates or, what Mr. Morton called, [918] fins in his patent.

Q. Now, this is the accused device, and it has what is known as a secondary system. That's correct?

A. That's right.

Q. And that is what you have just described?

A. That's what I have described.

Q. And in other words, there are two separate and distinct circuits, one known as the primary circuit in which the freezing refrigerant passes from the liquefying unit up through and around the freezing compartment for freezing that compartment—

A. (Witness nods head.)

Q. —and then there is the secondary system in which we have the closed circuit pipe around the back and sides of the cooling compartment. That's correct, isn't it?

(Testimony of Norman S. Parker.)

A. That's correct. All it does is deliver heat to the transfer plate.

Q. Now, I would like to use the blackboard for a minute.

(Whereupon the blackboard was put into position for use of counsel.)

Q. (By Mr. Byron): To put that in a simplified diagram in the patent suit we have this element which we will call the liquefying unit, the pump, and the compressor. Then we have a connection up to the freezing compartment. That is a freezing coil? [919]

A. (Witness nods head.)

Q. And then that is connected in series to a cooling coil and then that refrigerant—liquid refrigerant is changed to a vaporized heat, and that vapor returned to the original source, the motor compressor. That's correct?

A. I am not sure that that——

Q. This is the patent in suit.

A. Oh. The patent in suit?

Q. Yes. A. Yes. Correct.

Q. Now, this is the—— A. That's Potter.

Q. Potter, yes. Is that the freezing coil (indicating)?

A. And that is the cooling coil.

Q. This is the cooling coil? A. Right.

Q. And this is the cooling compartment up here, and this is the freezing compartment here (indicating)? A. Correct.

Q. Now, then, let's go to the accused device. We start off with the same motor compressor outfit, call

(Testimony of Norman S. Parker.)

it liquefying unit, and then we have a primary coil, a freezing coil, which comes up around the freezing compartment over the freezing compartment and under it for freezing material within. That's correct, isn't it?      A. Right. [920]

Q. And then this coil returns to the liquefying unit again?      A. So far right.

Q. Yes. Now then, we have in addition a secondary circuit, and this is the secondary circuit which is—I think I can do a better job on that.

The Court: Give him the eraser.

Mr. Byron: This is all right. Thank you.

Q. We have a coil in this form. This is the secondary coil, isn't it, for cooling purposes?

A. That's right.

Q. Now, this coil is entirely separate from this coil?

A. So far as any passage of liquid is concerned, it is.

Q. That's right. The liquid in the primary coil stays in the primary coil and circulates around it?

A. That's right.

Q. And the refrigerant in the secondary coil stays in it——      A. (Witness nods head.)

Q. ——in the secondary coil, it never gets out?

A. That's right.

Q. So that in the accused structure we may use two entirely different refrigerants?

A. Yes, you could.

Q. That's right. Well, now, structurally those are different, are they not?      A. Quite. [221]

(Testimony of Norman S. Parker.)

Q. I think that's all I want on that.

The Court: Mr. Parker, I think you can take your seat if you want to.

Q. (By Mr. Byron): And they function differently don't they? That is the actual operation of it is different? A. In detail, yes.

Q. Yes. Now, this may be a slight resume, but the accused structure is what is known as a cold wall refrigerator, is it not?

A. I think that's a fair statement.

Q. And in the Potter patent there is a finned coil arrangement? A. That's correct.

Q. And they are structurally different, are they not?

A. Yes; in detail. They perform the same function, but they are structurally different.

Q. They are structurally different, are they not?

A. Right.

Q. Now, as a matter of fact, they function differently too, don't they? A. In what sense?

Q. Well, I am asking you.

Mr. Cuninghame: I object, your Honor. He is——

Mr. Byron: Well, I am asking the questions; the witness answers questions.

Mr. Cuninghame: He is asking you to clarify your question [922] "In what sense."

Mr. Byron: He understands.

Mr. Cuninghame: I think he does not.

The Court: Objection overruled. This man is an expert. This is cross-examination.



(Testimony of Norman S. Parker.)

The Witness: Can I have that question again?

Q. (By Mr. Byron): The finned coil mechanism in the cooling compartment of the patent in suit or in the structure of the patent in suit functions specifically differently from the cold wall refrigerator in which it is cooled by a different means. That's correct, it functions differently?

A. Well, if you are talking in terms of function, they perform the same function which is to provide an extended heat transfer surface through which heat is abstracted from the storage space. In that sense they function the same.

Q. Their functional action, then, we will say, is different, then, is it not?

A. You mean the mechanics are different?

Q. All right, the mechanics. So they function differently mechanically?

A. Well, that's one of these questions that is a little bit hard to answer Yes or No. To me they do not function differently, but they have mechanical differences. In other words, in both of them there is an extended heat transfer surface which abstracts heat from the interior of a compartment, and in that sense they function precisely the same. Mechanically, [923] they are different in that obviously 60 or 30 fins on edge with a pipe through them don't look like and are not mechanically the same as a cold wall in which there is piping outside of the extended surface of the cold wall. [924]

Q. And, specifically, they do not act alike, do they?

(Testimony of Norman S. Parker.)

A. I would say they act alike as far as abstracting heat is concerned.

Q. I know, act alike specifically in extracting heat from the cooling compartment?

A. I would say that they acted alike in that respect.

The Court: Are you trying to find out that the end result is the same but they act differently in order to reach that result?

Mr. Byron: Yes.

The Court: Ask him the question. Is that true?

Mr. Byron: All right; you have the question.

The Witness: I would say the end result is the same, but the nature, mechanical nature of the surface presented to the air in the cooling compartment is different mechanically than the extended surface of Potter.

Q. (By Mr. Byron): Now, your attention again is called to the Davenport patent, 1,731,711, which is in evidence, I believe. Is it?

(Discussion off the record.)

Mr. Byron: I will offer it in evidence now.

Mr. Cuninghame: No objection, your Honor.

The Court: I thought that the Davenport was admitted?

Mr. Byron: I think so. Perhaps not.

The Court: Davenport is admitted now. That is the [925] one with the 711, ending with the figures 711?

Mr. Kolisch: This is 109 for Identification.

(Testimony of Norman S. Parker.)

The Witness: 1,731,711.

(Thereupon, the document, Davenport Patent 1,731,711, heretofore identified as Defendants' Exhibit 109 for Identification, was received in evidence.)

Mr. Byron: '711 is the one we are talking about.

The Court: Mr. Parker has that in his hands now. Do you have a copy, Mr. Cuningham, of the Davenport?

Mr. Cuningham: No, your Honor, we did not come prepared for this.

The Court: Give him a copy of Davenport, 109. Was Davenport cited by the defendants in their answer?

Mr. Byron: Yes, your Honor.

The Court: Well, then, you should have come prepared.

Mr. Cuningham: Of course, your Honor, my remarks apply to this. This is, you will notice, October 15, 1929, the same as with the finned patent.

The Court: While we are waiting for Mr. Byron to find the patent, I would like to ask a question that has not been made clear to me. Mr. Byron read a portion of Claim No. 2, but from time to time he would interject his own remarks about the wording, and so I did not get it clear, but this is the portion, I believe, you read: [926]

"A cooling refrigerant expander having heat-conducting surfaces within said cooling compart-

(Testimony of Norman S. Parker.)

ment and constructed and arranged to maintain its heat-conducting surfaces at a temperature above 32 degrees F. while withdrawing heat from said compartment."

Do I understand that the disagreement between you and Mr. Byron is that you call the compartment not only the space within the walls but also the space outside the walls but within the box, the outer box; is that right, Mr. Parker?

The Witness: I would say within the insulation.

The Court: Within the insulation?

The Witness: Yes, same temperature conditions.

The Court: Therefore, when they refer to surfaces within said cooling compartment you claim that it does not make any difference whether the coils are inside of the compartment or outside of the compartment?

The Witness: Yes, your Honor, that is my position.

The Court: You also made a statement that I did not understand in answer to a question by Mr. Byron dealing with, I believe, this statement:

"A cooling refrigerant expander having heat-controlled surfaces and arranged to maintain its heat-conducting surfaces at a temperature above 32 Fahrenheit." [927]

You said that that was impossible in the accused structure. Now, is that correct?

The Witness: I do not remember that, your Honor. I do not remember how that was.

The Court: You said something about impossi-

(Testimony of Norman S. Parker.)

bility. I was wondering whether you were referring to the fact that the description in Claim No. 2 was impossible of realization or whether under the make-up and the structure of the accused machine it was impossible for that to happen.

The Witness: I don't remember that language, your Honor. I am not clear on that as to what was said.

Mr. Byron: I remember it precisely.

The Court: Well, will you tell us then.

Mr. Byron: The point was that the section of the freezing coil which they choose to say also is a part of the cooling coil system, the cooling chamber, has a refrigerant passing therethrough which, when the machine is in operation, is at least zero degrees Fahrenheit. It is in a freezing condition. Now, the inside of that coil, being a part of the cooling coil as they explain it, cannot be maintained above 32 degrees if the refrigerant passing therethrough is zero degrees. It just cannot be. Now, that is the point.

The Witness: And as to that, the surface of that, I would agree that is a proper statement. In other words, the surface of the tubing at the rear of the primary transfer [928] plate is certainly at a temperature 32 degrees Fahrenheit, so we are in agreement on that.

The Court: Well, what does that mean, Mr. Parker?

The Witness: That just means that at a point outside of the moist cold locker or moist cold stor-



(Testimony of Norman S. Parker.)

age container there is a part of the tubing through which the refrigerant or coils, the moist cold container, flows which is at a temperature below 32 degrees Fahrenheit; but if I correctly understand the statements in the service manuals of the Admiral Company, it is only under unexpected and undesired conditions that the surface within the sleeve within which the food is put ever reaches a temperature below 32 degrees Fahrenheit, and that is the surface, of course, which is in contact with the food.

The Court: Are you talking about the accused structure when you said it was impossible, or are you talking about the description in Claim No. 2?

The Witness: Well, I am talking about the structure as shown in the exhibit, the physical exhibit before us at which Mister——

Mr. Byron: That is Defendants' Exhibit 117-A.

The Court: As I understand it, the purpose of this examination is to show that the accused structure does not do something which the claims require.

Mr. Byron: Does not do something; does not have [929] something; both.

The Court: All right; go ahead.

Mr. Byron: I have got a point again, only I thought of something else just a minute here, thought that your Honor asked about.

(Discussion off the record.)

(Testimony of Norman S. Parker.)

Mr. Byron: Has that been clarified in your mind, your Honor?

The Court: Yes. I thought if it is clarified in my mind there is a chance of its being clarified in the minds of the jury if they understood the Court.

Mr. Byron: I am prompted to go ahead and talk about it some more, but I do not know that I shall.

The Court: Do it with your own witnesses.

Q. (By Mr. Byron): Well, we were just talking before we entered into this general discussion about the cold-wall type of refrigerator such as exemplified by the accused refrigerators and then the finned-coil type as exemplified by the patent in suit, and you stated that, structurally, they were different. Functionally, you did not, were not quite sure.

A. Oh, yes; I was quite sure.

Q. Well, I mean they act differently with these structures. It is a compound proposition. Now, they are two separate types, distinguished, aren't they? A. Yes. [930]

Q. It was in that connection that I was about to call your attention to the file history of the original patent and first to Page 13, and the only reason I am calling attention to that page is that the original 14 claims in this Bronaugh-Potter patent were rejected on the Davenport patent, 1,731,711. That is one that we have discussed briefly, and I brought out that it had a freezing compartment and a cooling compartment, and in the freezing compartment

(Testimony of Norman S. Parker.)

there was a freezing coil, and in the cooling compartment there was a cooling coil, you could call it, or cooling expander, connected in series, and that expander takes the form of a wall of the cooling compartment and takes the form of two spaced metal plates between which the refrigerant passes. That is a cold-wall refrigerator, isn't it, the Davenport, 1,731,711?      A. Yes, it is.

Q. With that understanding, your attention is directed to Page 30 of the file wrapper, and this is what Mr. Potter and Mr. Bronaugh have to say with respect to that Davenport patent:

“As for the Davenport patent, the evaporator 5—” That is this plate which forms a part of the cooling wall, cooling compartment, and this is what Bronaugh and Potter say with respect to the Davenport patent in question. [931]

The Court: On the patent of Potter, second to the last line.

Mr. Byron: That is right.

“As for the Davenport patent, the evaporator 5 is not a coil, and it is impossible with Davenport's construction to obtain the results which applicants obtain with their non-frosting coil in the cooling chamber.”

You see those remarks?

The Witness: Yes, they are there.

Q. (By Mr. Byron): There are two more Davenport patents shown on this Defendants' Exhibit 114-L. One is a Davenport Patent 1,769,118, and the other is 1,726,344, and in the 1,726,344 there are

(Testimony of Norman S. Parker.)

a series of loops or a coil behind the cold plate of the refrigerator and behind the cover plate of the cooling compartment which constitutes a cold-plate structure; does it not?      A. Yes.

Q. And the cooling coils in that patent, 1,726,344, behind the shell or liner of the cooling compartment are arranged substantially the same as the coils around the cooling compartment in the accused structure; right?

A. It has a different form but similar relationship.

Q. Well, they are cooling coils?

A. That is correct, cooling coils outside of the liner. [932]

Q. Yes, and they are both cold-wall structures?

A. That is right.

Mr. Byron: I would like to offer in evidence the three Davenport patents; first, the 1,731,711 is in, as I understand it. Then Davenport Patent, 1,769,118 is Defendants' Exhibit 108.

The Court: 108.

Mr. Byron: Yes; and Davenport——

The Court: Wait a minute. Any objection?

Mr. Cunningham: Yes, your Honor; the same objection you will notice as to the dates, July 1, 1930, and August 27, 1929.

Mr. Byron: The filing date, your Honor, the filing date of the Davenport patent, 1,769,118, is April 28, 1927.

The Court: Objection overruled. The patent may be admitted. 108 is admitted.

(Testimony of Norman S. Parker.)

(Document, Davenport Patent No. 1,769,118, previously identified as Defendants' Exhibit 108 for Identification, was received in evidence.)

Mr. Byron: And the Davenport Patent 1,726,344.

Mr. Kolisch: That is Defendants' Exhibit 107.

The Court: What is the filing date?

Mr. Byron: For that the filing date is April 29, 1926.

The Court: Any objection? [933]

Mr. Cunningham: Oh, yes, your Honor. I assume that when you say they are admitted they are admitted for this limited purpose covered by one of our requested instructions?

The Court: This particular exhibit was not introduced on any restricted basis, but what is the purpose of the offer, Mr. Byron?

Mr. Byron: It is to show that the accused devices are following the prior art and not the Potter patent. We are following something earlier. We have two different types of refrigerators, a cold-wall type which these three Davenport patents show and as the accused structure shows as distinguished from the patent in suit which shows the finned-coil type.

The Court: They may be admitted. What is the number of that, 107 and 108?

(Davenport Patents 1,726,344 and 1,731,711, previously identified as Defendants' Exhibits



(Testimony of Norman S. Parker.)

107 and 109, respectively, were received in evidence.)

Q. (By Mr. Byron): Your attention is directed to the file wrapper and the contents of the Thomas I. Potter Patent 2,219,789.

Mr. Cuninghame: Now, if your Honor please, I object to that for any purpose. It has nothing to do with the patent in suit. It has nothing whatsoever—years later. It has [934] nothing to do with the plaintiff. There is not a statement in it that could be binding upon the plaintiff. It has absolutely no relevancy to any issue in this case.

The Court: I have never heard of the patent.

Mr. Byron: I will prove to the contrary of that, your Honor.

The Court: Is this a later patent?

Mr. Byron: It is a later Potter patent, but it shows after premature thought and far and before this litigation was ever contemplated he made certain statements with respect to the cold-wall type and the finned-coil type——

The Court: Objection overruled. It may be admitted for the same—on the same grounds that I admitted the other patent.

Mr. Cuninghame: I note an exception to that, your Honor. This has no connection with the plaintiff.

The Court: That is what they said when you offered your patent.

(Testimony of Norman S. Parker.)

Mr. Cuningham: On the contrary, the patent is that of the chief engineer of the defendant.

The Court: And this is the patent of Mr. Potter himself. Objection overruled.

Mr. Byron: 118, we offer it in evidence.

(Document, Potter Patent 2,219,789, previously identified as Defendants' [935] Exhibit 118 for Identification, was received in evidence.)

Mr. Cuningham: This is the whole file wrapper or the patent?

Mr. Byron: The whole file wrapper.

The Court: Wait a minute. Mr. Byron, I think that the patent is probably admissible even on this time as a basis for interrogating Mr. Parker, but it seems to me that we would save a lot of time if you would put those files in on your case in chief. I think you will go a lot faster. [936]

Mr. Byron: That's right, your Honor. But if I may have three minutes on this I will conclude, because it's very pertinent.

The Court: Are you offering the file wrapper for admissions made by Mr. Potter?

Mr. Byron: Yes. To show what he stated about the cold wall type of refrigerator.

The Court: I am not going to admit it. You can have it identified at this time and then we will discuss the admissibility at a later time.

Mr. Byron: All right. But I can talk about it under those circumstances? It's marked for identification as Defendants' Exhibit 118. Now——

(Testimony of Norman S. Parker.)

The Court: I thought that you wanted it identified for the purpose of propounding a question.

Mr. Byron: That's right, I do.

The Court: Go ahead.

Mr. Byron: And to refute his conclusion as to infringement.

The Court: Go ahead.

Q. (By Mr. Byron): Now, your attention, Mr. Parker, is invited to page 25 of this file wrapper, and particularly to the rejection of claims on the Gibson patent 2,073,741.

Mr. Cuningham: Now, if your Honor please, I think we ought to have the Gibson patent in the case. [937]

Mr. Byron: We will get it. We will offer it right now. Glad to have it in.

The Court: All right. Do you both join in offering the Gibson patent?

Mr. Cuningham: No, your Honor. I think it's not prior art. I think we have disposed of it but I——

Mr. Byron: I am not saying I am using it as prior art. That is the Gibson patent 2,073,741, and I will offer it in evidence as——

The Court: I will take that one under advisement.

Mr. Cuningham: No objection.

The Court: Well, then, the ruling is different. It may be admitted.

The Clerk: 119-A.

Mr. Byron: Now, then, is that the——

(Testimony of Norman S. Parker.)

Mr. Cuningham: Which of the two Gibson reissues or the original are you putting in?

Mr. Byron: This is the original and we have put in the reissue patent which is set up in the answer.

Mr. Cuningham: As the file wrapper?

Mr. Byron: No. The file wrapper is of the Potter patent. I don't know the number. It's 118 for identification.

The Witness: It's 221—

Mr. Cuningham: You are not offering the file wrapper of the Gibson patent?

Mr. Byron: I haven't yet. [938]

Mr. Cuningham: You have it marked on your list of exhibits.

Mr. Byron: I am not saying we are going to offer it.

Mr. Ramsey: 119-A, 119-B, and 119-C.

Mr. Cuningham: Those I read are not the file wrappers, not the patent themselves. You have—

Mr. Byron: We offer the file wrappers, and I will offer the copies of the patents also.

Mr. Cuningham: That's unnecessary, your Honor. We have got it in twice. The question is whether you put the whole file in or what he didn't mark.

The Court: All right.

Mr. Cuningham: It isn't any proof of anything as far as what was filed originally. The patent is what issued and not what was filed.

The Court: Mr. Byron—

Mr. Byron: Yes, sir.

(Testimony of Norman S. Parker.)

The Court: —you offered Gibson. What is the exhibit number of Gibson?

Mr. Cuningham: 119-A, 119-B, 119-C.

The Court: Is that one patent, or are there more than one patent?

Mr. Cuningham: It is one patent and two re-issues, and there is no objection to the file wrappers going in.

The Court: And the file wrappers include a copy of the [939] patent that was issued?

Mr. Cuningham: Of all three patents that were issued for this one invention.

The Court: Are you offering that?

Mr. Byron: Yes.

The Court: All right. They are admitted, all three file wrappers.

(The documents were thereupon admitted in evidence as follows: File Wrapper, Reissue 2,-073,741, Gibson, as Defendants' Exhibit 119-A; File Wrapper, Reissue 21,040, Gibson, as Defendants' Exhibit 119-B; and File Wrapper, Reissue 21941, Gibson, as Defendants' Exhibit 119-C.)

Q. (By Mr. Byron): Now, Mr. Parker, there has been quite a span since I started, so I will ask you to refer to the file wrapper of the later Potter patent No. 118 for identification, and I will call your attention to one page there where certain claims of the Potter patent were rejected on various



(Testimony of Norman S. Parker.)

references including the Gibson patent 2,073,741. Right?

A. Claims 1 to 6 and 8 are rejected as reading directly on Gibson, and Gibson is given above as 2,073,741, Claim 7 is rejected on Gibson also.

Q. Well, that's sufficient. Now, then——

The Court: Wait a minute, Mr. Byron. I thought that [940] this was done for the purpose of impeaching Mr. Potter.

Mr. Byron: It is, and just one more question and it will.

The Court: All right. But you have to show some acquiescence or something and a ruling by the examiner rejecting a claim is not an admission on the part of Mr. Potter.

Mr. Byron: And your Honor, it's to impeach this witness to a certain extent on the question of results that are obtained in the accused cooling compartment.

The Court: How are you impeaching Mr. Potter by the ruling of an examiner?

Mr. Cunningham: Mr. Parker?

The Court: Mr. Parker.

Mr. Byron: Well, I am just showing that he says that you get the same results in the cooling compartment of the Potter refrigerator and in the cooling compartment of the accused refrigerator, and I want to show that Mr. Potter in presenting a case before the patent office entirely disagreed.

The Court: Mr. Potter?

Mr. Byron: Yes.

(Testimony of Norman S. Parker.)

Mr. Cuningham: Your Honor, what could that have to do possibly with Mr. Parker? What can it have to do with the case?

Mr. Byron: I will ask whether or not Mr. Parker then [941] agrees or disagrees with Mr. Potter.

Mr. Cuningham: Furthermore, your Honor, this wasn't even notice under the statute. We have no notice of this patent.

The Court: Have you—did you notice this one in your pleadings?

Mr. Cuningham: No, sir.

The Court: Did you show them?

Mr. Cuningham: The answer is No, sir, nowhere. And it's not in compliance with the 30-day statute.

Mr. Byron: I understand we have an order on that.

The Court: An order?

Mr. Cuningham: That's news to me. I don't know about any order.

Mr. Ramsey: If the Court please, there was notice more than 30 days and I actually presented a motion and I understand the order was signed and included Gibson and Lundgard.

Mr. Cuningham: That is not what we are talking about. I am talking about this Potter—

The Court: Thomas I. Potter. The new Potter?

Mr. Byron: We can take it subject to notice and they can do as they please about it.

The Court: We are going to take a recess now. Take a recess for ten minutes.

(Testimony of Norman S. Parker.)

(Whereupon the jury was excused for a ten-minute [942] recess.)

The Court: First I want to say that I do not regard a statement by an examiner rejecting a claim as being an admission against Mr. Potter.

Mr. Cuningham: Yes.

The Court: If Mr. Potter acquiesces in a statement or makes an admission which appears in a file wrapper the file wrapper is admissible for that limited purpose.

Mr. Byron: That's all I want.

Mr. Cuningham: If your Honor please, Mr. Potter is not on trial. This patent has nothing to do——

The Court: You don't wait until I finish, Mr. Cuningham.

Mr. Cuningham: I am sorry. I apologize.

The Court: Under our rule and the rule I announced previously with the exception of the provisions inserted by Mr. Cuningham in the pretrial order, unless an exhibit is noted prior to the time of the trial, it may not be used for any purpose whatsoever, with the possible exception that if a party is caught by surprise. Now, I don't think that the defendants here are being caught by surprise by anything that Mr. Parker has said, and therefore, I don't see that this document is admissible on either of those two grounds.

Mr. Byron: Your Honor, I am caught by surprise, very much so, to have Mr. Parker's interpretation of the claim as applied to the accused struc-

(Testimony of Norman S. Parker.)

ture. That is so far remote [943] from my thinking that I didn't think it was possible. And in that sense I am taken by surprise.

And Mr. Parker has said certain things about the structure and operation, the functioning, and particularly the results in the accused device, what happens in the cold food compartment of the accused device, and I want to show that there are authorities such as Potter who do not agree with Mr. Parker.

Mr. Ramsey: May I add something to that?

The Court: Well, I'm not going to make Mr. Potter into an expert. He is an expert salesman but I don't think he is an expert engineer, and I am not going to permit his learning—engineering learning—to be used as a basis for impeaching Mr. Parker.

Mr. Ramsey: If the Court please, may I note that this is in the pretrial order? This particular document was 118 of the pretrial order.

Mr. Cuninghame: We objected to it in the pretrial order.

Mr. Ramsey: It's not a question of surprise.

Mr. Cuninghame: Wait a minute, if your Honor please. It is under Section 282, Chapter 28. The 30-day notice was not given with respect to this patent. Of course, it has no relevancy whatsoever. I don't know why I object to it except that it just encumbers the record and it may be prejudicial, it seems to me, if they try to use it in a fashion—but I [944] think they can show——



(Testimony of Norman S. Parker.)

The Court: Well, I want to say that this satisfies the local court rules in all respects if it was listed as an exhibit. I was under the impression, from what you said, Mr. Cuningham, that it was not listed as an exhibit.

Mr. Cuningham: Well, if your Honor please, and I quote, "In actions involving the validity or infringement of a patent the party asserting invalidity or known infringement shall give notice in the pleadings or otherwise in writing to the adverse party at least 30 days before the trial."

The Court: Oh, Mr. Cuningham, the purpose of that section is altogether different from the purpose for which this patent is being offered. This patent is not being offered to show anticipation or some other thing in accordance with the purpose of the section which you are reading.

This exhibit is being offered solely for the purpose of getting some admissions from Mr. Potter or to in some way impeach Mr. Parker.

Now, I don't know how it's impeaching Mr. Parker. Now, we are coming to the second basis. Tell me again, Mr. Byron, what do you say that this exhibit shows?

Mr. Byron: Well, this exhibit, your Honor, shows that certain claims—and I don't care about that particularly—were rejected in a Potter application on the Gibson patent. The Gibson patent showed pretty well what the accused structure [945] is.



(Testimony of Norman S. Parker.)

The Court: Why wouldn't this be better to come in on your case in chief?

Mr. Byron: Well——

The Court: What is the purpose of interrogating Mr. Parker with reference to it? It just takes a lot longer to put in your case through adverse witnesses.

Mr. Byron: I know. But Mr. Parker has taken the position that you get the same results in the cooling compartment of the accused device as you get in the cooling compartment of the Potter patent, and this——

The Court: Suppose some——

Mr. Byron: ——and this statement is to the contrary.

The Court: Suppose some examiner in the patent office says that Mr. Parker is mistaken? So what?

Mr. Byron: I don't worry about the examiner in the patent office, I am talking about what the attorneys for Potter said in trying to get the claims allowed and denouncing the accused structure; that is, the cold wall type, and saying that they are inferior and cannot operate and get the results that the patent in suit gets.

The Court: Now, the only basis for the statement is that Potter and Potter's then attorneys were more expert than Mr. Parker.

Mr. Byron: Well, I wouldn't like to say that because [946] Mr. Parker is quite an expert.

The Court: Really, I have been trying to give very wide latitude for cross-examination and even

(Testimony of Norman S. Parker.)

for original examination, but I don't think that this is admissible, Mr. Byron.

Mr. Byron: That is on cross-examination.

The Court: On cross-examination, because I don't think it—it might have been proper when you were interrogating Mr. Potter himself to show that Mr. Potter didn't know very much, but I just can't see the relevancy in interrogating Mr. Parker.

Now, it couldn't be filed after estoppel because this is the wrong file wrapper. Well, I am going to sustain the objection and we will consider it on the defendants' case in chief.

Recess for about five minutes.

(Recess)

(The following proceedings were had in open court within the presence of the jury:)

The Court: Go ahead, Mr. Byron.

Q. (By Mr. Byron): On a quick resume with respect to one phase of this case in the patent suit there is only one refrigerant, right?

A. That's right. [947]

Q. That sole refrigerant first passes through the freezing coil 22 and then through the cooling coil 25?

A. Yes.

Q. The two coils, 22 and 25, are connected in series?

A. Correct.

Q. In the accused there are two separate and distinct refrigerants?

A. That's right.

Q. One refrigerant for the freezing coil and a second and separate refrigerant for the cooling coil?

(Testimony of Norman S. Parker.)

A. I wouldn't state it that way.

Q. There is a second refrigerant in connection with the cooling of the cooling compartment?

A. That's correct.

Q. And in the accused one refrigerant for the freezing coil passes through the motor compressor set, through the freezing coil for the freezing locker and back to the motor compressor set?

A. That's correct.

Q. In the accused the second and separate refrigerant passes through a coil of a secondary transfer plate down through a single central stem and outwardly and upwardly through two lateral branches and back to the coil of the secondary transfer plate?

A. That's correct. [948]

Q. In the accused there is a primary refrigerant circulating system and secondary refrigerant circulating system?

A. That's correct.

Q. The primary is for freezing purposes for the freezing locker or freezing compartment——

A. It has that function.

Q. ——the secondary is for cooling purposes for the main food compartment?

A. I would say that was incomplete because the secondary circuit supplies or delivers heat from the cooling compartment to the primary circuit to be removed by the primary circuit.

Q. Well, the secondary circuit is for cooling the cooling compartment and the food therein?

A. That's correct.

Q. Now, I want to discuss with you this element

(Testimony of Norman S. Parker.)

in the claim "A single liquefying unit associated with said expander and constructed and arranged to condense refrigerant expanded by heat extracted from both compartments." Now, the first part of that, "A single liquefying unit," in the patent in suit, the single liquefying unit comprises the motor 16, the compressor 15, and condenser 18 in the compartment 11. That's correct, isn't it?

A. I can't see the drawing. Would you repeat that, or I can come up there. [949]

Q. Did you get the question?

A. I didn't, no.

Q. All right. I will repeat it. In the patent in suit the single liquefying unit comprises the motor 16, the compressor 15, condenser 18 set in this compartment 11.

A. Right.

Q. In the accused refrigerator there is a liquefying unit in the circuit of the primary or freezing coil or expander. That's correct?

A. Yes.

Q. That is shown at the bottom of Plaintiff's Exhibit 8-A-1?

A. Right.

Q. In the accused refrigerator the refrigerant flowing to the secondary or cooling coil or expander does not pass through the liquefying unit, does it?

A. It does not.

Q. In the accused refrigerator the refrigerant flows through the secondary or cooling coil after it becomes vaporized in the heat-absorption section of the secondary, said vaporized refrigerant is recondensed in the coil section of the secondary system at the secondary cold transfer plate, is that correct?



(Testimony of Norman S. Parker.)

A. Yes; that's correct, being condensed by the refrigerant that passes across the primary plate [950] 104.

Q. So that in the accused refrigerators there is a liquefying unit in the freezing expander circuit, and there is another liquefier or condenser in the cooling expander circuit? A. Yes.

Q. A volatile refrigerant circulating through said expanders being the sole heat-extraction medium. Now, in the patent in suit there is disclosed only one volatile refrigerant, and that one refrigerant passes through a circuit and passes through both the freezing coil and the cooling coil?

A. Correct.

Q. And that is the sole extracting medium?

A. That is right.

Q. In the accused refrigerators there are two separate and distinct volatile refrigerants, as we have brought out several times?

A. That is right.

Q. In the accused refrigerators one volatile refrigerant flows exclusively through a freezing coil or expander and constitutes the medium for extracting heat from the freezing compartment through said freezing coil and expander.

A. May I have that again. I wasn't sure I got it all.

Q. In the accused refrigerators one volatile refrigerant flows exclusively through the freezing coil and constitutes the medium for extracting heat from



(Testimony of Norman S. Parker.)

the freezing compartment [951] through said freezing coil?

A. I wouldn't say that that flowed exclusively through the freezing coil. The coil on the transfer plate 102 is the coil which withdraws heat from the secondary transfer plate, and it flows through that, also, and it does extract the heat from the frozen food locker.

Q. Well, but the one refrigerant in the primary circuit is the sole means for extracting heat from the freezing compartment?

A. That is correct.

Q. Now, in the patent in suit the thermostat is responsive to the temperature in the cooling compartment; is that correct?      A. Yes.

Q. In the accused refrigerators there is no thermostat in either the freezing compartment or the cooling compartment, is there?

A. The thermostat structure is not actually in there. There are bulbs responsive to temperature of the two compartments.

Q. But they are not in the compartment?

A. They are not in the interior of the compartments; they are within the sleeves, just outside the sleeves. In that sense they were in the insulation, and, in my opinion, that would be in the [952] compartments.

Q. That would bring up the same question of what is a cooling compartment and what is a cabinet?

A. That is right; and on that we differ.

(Testimony of Norman S. Parker.)

Q. In the patent in suit it talks about the flow of heat into the cooling compartment 14 and the rise of temperature of the air therein, that the thermostat 31 functions to start a liquefying unit before the freezing compartment approaches a non-freezing value. A. That is correct.

Q. In the accused refrigerators there are two thermostats or temperature controls, one being a primary control located outside of the freezing compartment and the other being a secondary control located outside of the cooling compartment; is that correct?

A. I would substitute "sleeve" for "compartment" in those two statements.

Q. Well, that is awfully technical, don't you think?

A. No, I do not think so at all.

Mr. Cuningham: 'If your Honor please——

Mr. Byron: I am asking for——

Mr. Cuningham: These are obviously tricky questions.

Mr. Byron: Tricky questions? I think they are tricky answers.

The Court: Both remarks of Mr. Cuningham and Mr. Byron are stricken. [953]

Mr. Byron: Good.

Mr. Cuningham: Thank you, your Honor.

Mr. Byron: I thank you, too. We are all happy about it.

Q. The primary control outside of the freezing compartment controls the starting of the motor com-

(Testimony of Norman S. Parker.)

pressor set to maintain below-freezing temperature in the freezing compartment in the accused refrigerators; that is correct, is it not?

A. Will you read that again? I think there was a noise outside. I couldn't hear.

Q. Yes. The primary control of the freezing compartment controls the starting of the motor compressor set unit to maintain a below-freezing temperature in the freezing compartment in the accused refrigerators and independently of the temperature in the cooling compartment.

A. I am not so sure that it is independently of temperature of the cooling compartment.

Q. Your attention is directed to Plaintiff's Exhibit 4-CC-2 and to Pages 2 and 3. I would like to ask you to refer to that (presenting pamphlet to the witness).

Mr. Cuninghame: That is Pages 1, 2, 3, or 2, 3, 4, what parts?

Mr. Byron: I will tell you.

The Court: Perhaps Mr. Byron can point it out to Mr. Parker. [954]

The Witness: Well, 2 and 3 is what I have to look at.

As I understand the operation of the primary system, the primary control is operated—operates to make and break the motor compressor circuit, and the primary control in the Figure 5 shown at the upper right hand of Page 3 of the exhibit which you have handed me is located apparently on the upper locker tubing at a lower part of that tubing.

(Testimony of Norman S. Parker.)

Q. That is the freezing compartment section?

A. That is a freezing compartment section, so when the freezing compartment calls for refrigeration it actuates that control; however, I notice at Page 1 of this same exhibit, the second column, this statement:

“Also less insulation is used between the locker and moist cold compartment and, consequently, the top of the moist cold compartment is cooled somewhat by the bottom of the locker.”

In other words, there is an exchange of the heat between the two lockers, and the cold from the upper locker affects the lower locker, which is another way of saying that the heat from the lower locker affects the temperature of the upper locker, and, of course, a thinning of the insulation between those two sleeves comes at the point where the primary control is indicated in Figure 5 of this exhibit, Page 3, so I would think that there is a response not only to the heat in the freezing compartment but also to the [955] passage of heat from the lower compartment. In other words, this control which makes and breaks the motor compressor circuit responds to the temperature conditions, to some degree, within both sleeves.

Q. Now, going back, in the accused device there is a thermostat associated with the freezing compartment which operates the switch for starting the motor in action and causing it to stop; that is correct?

A. That is correct.

Q. Then there is associated with the cooling com-

(Testimony of Norman S. Parker.)

partment in the accused device another thermostat; is there not?      A. That is correct.

Q. Now, the thermostat associated with the freezing compartment can set the system in operation for cooling the freezing compartment only?

A. No, that would hardly be a fair statement. The operation of the switch controlled in response to the temperature—or, rather, operated by the bulb outside of the sleeve of the freezing compartment, that control is the only control which directly controls the motor circuit. However, there is always some, or there would tend to be some passage of heat—wait a minute. I had better have your question again to make sure I am not wandering.

Q. I think so. Let me put it this way. Maybe it is simpler. The motor compressor set can be set into operation [956] for extracting heat from the freezing compartment only; that is correct—in the accused device?

A. I am not sure whether I fully understand or completely agree with that statement because I have said——

Q. Let me read it to you.

A. Oh, I know what it says. What I am referring——

Q. Now——

Mr. Cuningham: I object, your Honor. I think he ought to complete the answer.

Mr. Byron: I am just trying to be helpful.

The Witness: To be frank with you, it seems to



(Testimony of Norman S. Parker.)

me that the two sets of statements in this exhibit are contradictory. In other words, there is shown a setup or system which is described as if there were no influence on the thermostat by the temperature in the warmer compartment, but they go ahead and say that they have thinned out the insulation so that there is a heat exchange between the two compartments, and so, to me, there is a contradiction between those two sets of statements.

Q. That is your interpretation?

A. That is my interpretation.

Q. Now, just referring to Pages 2 and 3, however, of this particular exhibit, Plaintiff's Exhibit 4-CC-2, just those two pages, on just those two pages there are statements of the operation there in which heat is extracted only from the [957] freezing compartment when the thermostat associated therewith is actuated.

A. That is correct.

The Court: Is that the manual of Admiral?

Mr. Byron: That is right.

The Witness: It is an Admiral manual, your Honor.

Q. (By Mr. Byron): Then the thermostat associated with the cooling compartment operates on a valve for controlling the passage of the refrigerant through the refrigerating coil or through the refrigerating coil and the cooling coil; right?

A. That is correct.

Q. So that the heat may be extracted simultaneously from both the cooling compartment and the freezing compartment, and totally separate from

(Testimony of Norman S. Parker.)

that heat can be extracted from the freezing compartment only in the accused refrigerator; right?

A. That is correct.

(Discussion off the record.)

Q. (By Mr. Byron): Mr. Parker has referred to a long hypothetical question which was put to you this morning.

A. A very long one.

Q. I would like to ask a few questions about that.

In giving your opinion as to a reasonable royalty, did you take into account all of the factors set out in that [958] hypothetical question?

A. I tried to.

Q. Would your opinion be changed if it developed that some of the facts included in the hypothetical question were not correct, as a matter of fact; for example, that Potter or Bronaugh and Potter were not the first to disclose or provide in a single compact unit for household use a compartment for the preservation of fresh foods in a moist cold atmosphere above freezing temperature and a separate compartment for freezing and preserving other foods safely and for long periods of time in frozen state at temperatures substantially below the freezing temperature; that such refrigerators for the first time brought refrigeration of the kind claimed to the home; that such refrigerators for the first time provided a household unit wherein without the use of covered pans the moisture of the food stayed in the food instead of being dried out; that

(Testimony of Norman S. Parker.)

such refrigerators eliminated the frosting and defrosting of the chilling element in the compartment for the preserving of foods at temperatures above freezing and that such refrigerators——

The Court: Is this one question?

Mr. Byron: Yes. I said for example. Well, I will cut it off there. I will break it up.

The Court: I think Mr. Parker knows. Were all those [959] statements assumed by you to be true?

The Witness: Yes, your Honor.

The Court: Each and every one of them?

The Witness: That is right, your Honor, for the purpose of that answer.

The Court: In other words, you did not draw upon your own knowledge of the state of the market nor of the truth of the statements, but you solely assumed that all of the facts given to you were true?

The Witness: That is correct, your Honor.

The Court: Go ahead.

Q. (By Mr. Byron): In arriving at your answer to this hypothetical question, did you take into account competition in the particular field of household electrical refrigerators?

A. Was that mentioned in the hypothetical question? It is so long that I cannot remember it.

Q. I think it was.

A. If it was not mentioned in the question, I did not take it into consideration.

Q. Well, it spoke about other companies manu-

(Testimony of Norman S. Parker.)

facturing refrigerating apparatus and trying to do the wonders of Potter, and so that is included.

A. Well, I read the question rather carefully before I answered it, and I tried to keep all of these hypotheses [960] in mind, with some difficulty, and my answer was on the basis that all of these very favorable hypotheses, shall we say, were correct.

Q. If you knew or had reason to believe the hypothetical patents were invalid, would that fact influence your opinion as to what a reasonable royalty should be?

A. If the hypothetical patent is now hypothetically invalid, I would say that there should be no royalty paid at all. In other words, you do not pay royalties for an invalid patent.

Q. If no refrigerators were produced by or under the hypothetical patent, would that influence your opinion as to reasonable royalty?

A. No.

Q. If the hypothetical patent you are considering had no provable commercial success, would that affect your opinion as to reasonable royalty?

A. Assuming that all the other hypotheses were correct, I would say that it would not.

Q. I have one question down here. I think you have answered it already, but I will just put it to make sure that it is in.

Mr. Cuninghame: If the question has been answered, why put it in again?

Mr. Byron: I said I think it has been. I may be wrong. [961]

(Testimony of Norman S. Parker.)

The Court: Go ahead.

Q. (By Mr. Byron): If the hypothetical patent is invalid, should any royalty be paid thereon?

The Court: He has already answered that.

Q. (By Mr. Byron): Would a license taken under an invalid patent have any value?

A. I cannot see why.

Mr. Byron: That closes the cross-examination.

### Redirect Examination

By Mr. Cheatham:

Q. Mr. Parker, if food were placed in Defendants' Exhibit 117, which is the secondary system and the liner attached as you see it there on the floor, could it be cooled by that piece of apparatus?

A. You mean by that piece of apparatus alone?

Q. That is right.

A. That includes those—carries the secondary system through to the secondary contact plate?

Q. And stop right there. A. No.

Q. If I understand you correctly, it is only when Defendants' Exhibit 117 is combined with Defendants' Exhibit 117-A in the manner taught by the—

Mr. Byron: Well, now, I don't like to be too serious [962] in making objections, but this is rather leading, I think, isn't it?

The Court: This is redirect.

Mr. Byron: Redirect, I know, but even so—

The Court: That is what I am talking about. He cannot do what you can do. You can ask leading



(Testimony of Norman S. Parker.)

questions, but this is his own witness, and he cannot ask leading questions.

Mr. Cheatham: I will change it, then.

Q. What would be the effect on your answer if Defendants' Exhibits 117 and 117-A were combined in the combination of Admiral refrigerator Exhibit 10-A?

A. Well, on the basis of the description of the Admiral machine, Admiral refrigerator——

Mr. Byron: Your Honor, again this is not proper redirect examination, as I understand it.

The Court: May I have the last question read.

(Last question read.)

The Court: I am going to give him wide latitude. Go ahead.

The Witness: On the basis of statements in the Morton patent about which I have testified and in the Admiral service manuals, the heat-conductive connection between the two transfer plates then makes, completes the machine, and it will function as a refrigerator when the primary system is [963] cycling.

Q. What is the effect on the primary thermostat which controls the on-and-off cycling of the system, of the primary system of heating the interior of the cooling compartment?

A. Well, I have never tried that. I would have to—all I can say is that the last Admiral service manual about which I testified on cross-examination indicates a heat leak or a heat path between the

(Testimony of Norman S. Parker.)

upper part of the secondary sleeve and the lower part of the primary sleeve so I would expect that heating the interior of the lower compartment would have an effect and would certainly have some effect on the operation of the heat-responsive member which controls the motor switch, motor [964] circuit.

Q. (By Mr. Cheatham): Did I understand you correctly to say that there is no difference in the insulation shown in the Potter-Bronaugh Reissue Patent 23,058 and the insulation shown in the Anderson Patent 1,439,051?

A. Well, if I did say that I was doing it by mistake, because I certainly had no such idea. The Bronaugh and Potter patent has differential insulation in the sense that the insulation is thicker around the freezing compartment, whereas in Anderson the thickness of the insulation throughout the walls of both compartments and between the two compartments is of uniform thickness so far as you can tell from looking at the drawing, and nothing is said about that matter in the patent itself.

Q. Did I understand you to testify that Admiral did not have a finned coil in the cooling compartment or its equivalent?

A. Why, they don't have a finned coil in the sense that Bronaugh and Potter have a finned coil. Of course, Mr. Morton describes this transfer plate as fins, so there is some latitude, possibly, in describing what a fin is. If you use the term as broadly

(Testimony of Norman S. Parker.)

as he did a fin might be any plain surface, or flat sheet or thin sheet.

Q. And are all of the elements of the Potter and Bronaugh Reissue Patent 23,058 old by themselves?

A. Yes; they are all old.

Q. Mr. Parker, have you noticed any corrections which you may wish to make in the testimony which you gave on direct [965] examination?

A. Yes. There are three or four or five pages there where some mistakes were made which seem not to indicate what I thought I said or intended to say.

Q. Can you point them out to me?

A. I can if I have a copy of the transcript.

The Court: Do you know what pages they are on?

The Witness: I marked the mistakes myself, your Honor, in pencil on the back of this after I read it. At page 755, line 7, the word "gap" should be "gas," and the word "evaporator"—two occurrences there—should be "vapor."

The Court: Is that the nature of all of your corrections?

The Witness: Something of that order, yes, your Honor.

The Court: Oh, well, you just tell that to Mr. Lucas a little later and show him where the corrections are. There is nothing of any fundamental character at all?

The Witness: No, nothing.

The Court: Mr. Parker has to take a plane

(Testimony of Norman S. Parker.)

pretty soon and we are trying to get him out of town. He is coming back, though.

Mr. Cheatham: No further questions, your Honor.

The Court: I had one question, Mr. Parker. In the hypothetical question that was propounded to you you stated that you assumed the truth of the rather favorable statement—I think those were your words—in the question, and that [966] you did not take into consideration your own information or knowledge of the elements set forth in the statement. Am I correct in that?

The Witness: Well, I would put it a little differently; that is, that I understood that this was a hypothetical question; that I was bound by the hypotheses, and that is all that I considered were the hypotheses of that question. Of course, there is much material in it which relates to matters which are entirely outside of anything that I have had occasion to determine. They got a long ways from the patent field.

The Court: I will tell you precisely what concerned me. Do you mean to imply that you considered the statements in the question literally and that even though you knew that some of the statements were incorrect you disregarded your own information and took the information set forth in the statement?

A. No, I don't—I am not conscious of having any information of my own which is contradictory to any of the statements.

(Testimony of Norman S. Parker.)

The Court: That's precisely what I had in mind, and I thought that maybe your statement was not clear in that regard. In other words, you are vouching for the truth of the statement so far as you know?

A. Yes, I have—there is nothing in the hypothetical question which I have any reason for questioning. What I had [967] in mind when I made that little remark which I probably should not have made is simply this: That the rate of royalties must inevitably, assuming that a reasonable royalty is arrived at—it must inevitably depend upon the place of the invention in the art, that and other factors, such as the previous condition of the prior art and so forth. But I have no information which in any way traverses any of those hypothetical statements.

#### Recross-Examination

By Mr. Byron:

Q. You do not know as a fact that all of those statements are accurate, do you?

A. I would have to go back and read that question through to answer that.

The Court: Well, I think that he has already indicated that he took the statement as true without regard to his own knowledge and that on many things he had no knowledge. Is that right?

The Witness: That would be correct, yes. No direct knowledge.

Mr. Byron: No further recross-examination.



Mr. Cuninghame: Well, if your Honor please, it seems a bit late to start another deposition.

The Court: We will quit. Mr. Parker, you are excused [968] and you can go home.

Mr. Cuninghame: If he comes back Monday morning, your Honor. We would like to have him then.

The Court: I am going to say that Mr. Byron—do you want Mr. Parker any more?

Mr. Byron: No, sir, I don't.

The Court: Well, then, as far as I am concerned he is excused. Do you want me to issue an order requiring him to come back?

Mr. Cuninghame: No, your Honor. I just want to impress upon him that I would like to have him come back.

The Court: There is no order against you, Mr. Parker, but I understand Mr. Cuninghame would like to have you come back Monday morning.

(Witness excused.)

The Court: Today is Tuesday and we are going to have one more day of trial before the recess. Is 9:30 a pretty good hour?

(The jurors nodded in the affirmative.)

The Court: If we start a little earlier we can go home a little earlier.

Now, I want to tell you once again that you haven't heard all the case yet. You haven't even heard all of plaintiff's case. Please keep an open mind. I think that probably [969] many of you are

in the same position as I am, but there is a lot of information and evidence that has come into the record, and at this time we don't know its place in the whole case. I remember many of the questions which Mr. Byron was asking Mr. Parker and that Mr. Cuninghame was asking of Mr. Cheatham. I couldn't see the relevancy of that, but that is what is going to be cleared up. The relevancy of this testimony both on direct and cross-examination will be made apparent to you if the lawyers do their job in the final argument. You won't know how this case should be decided until after you have heard that evidence discussed and until you hear what I have to say about the law. I am not telling you what I think about the law until that time. I say this all the time because I know that there is a tendency to make up your minds. That is a tendency that everybody has. I am subject to the same thing. So that is why I know. Please guard against it.

You are now excused until 9:30 tomorrow morning. We don't want anybody to go out of town and not come back. We need you.

(Whereupon the jury was excused.)

The Court: Mr. Cuninghame, do you think you will finish tomorrow?

Mr. Cuninghame: I certainly hope so, your Honor. I think we will. [970]

The Court: Have you any live witnesses?

Mr. Cuninghame: Well, I wonder how we can arrange it. You see, I do want, as I indicated this morning before this session, another witness. And

then I have, of course, the Morton deposition we have talked about. That is only an hour or roughly that or a little less, probably, and then I have some skipping to do through that large volume of various witnesses, but that shouldn't take too long.

Now, when that other witness becomes available to me and I should think we could work out some plan——

The Court: You mean on the offer of proof?

Mr. Cuninghame: No, your Honor; on the matter I spoke to you about before this morning on the question of proportionate insulation. I asked to have the chief engineer of Admiral who is on the list tell us about that.

The Court: Is the chief engineer here?

Mr. Byron: Yes.

The Court: Mr. Bohman?

Mr. Cuninghame: I understood he wasn't coming till Monday. I wish I had known that. I would have put him on the stand today. The information was he wouldn't be here till Monday. That's what I understood.

Mr. Kolisch: No, "he will be here Monday."

Mr. Cuninghame: Oh. "He will be here Monday."

Mr. Byron: Sure. [971]

Mr. Cuninghame: Can we start with him tomorrow morning?

The Court: Certainly. There is no reason why you shouldn't.

Mr. Cuninghame: Well, then, I think, your Honor, we will take part of the day; I hope not the whole day. I want to make that statement subject

to my review of the exhibits and how much we have got left to clean up.

The Court: I thought that it might be desirable if you would submit your offer of proof sometime Friday when the jury isn't going to be around and you can get all that out of the way.

Mr. Cuningham: Your Honor, I think that is an excellent suggestion. It hadn't occurred to me and I would be glad to do it.

The Court: Is that all right with you to take it up Friday?

Mr. Byron: Yes, indeed.

The Court: Then we can save some time when the jury is not here.

Mr. Cuningham: I would be glad to, sir.

(Discussion off the record.)

The Court: Recess until tomorrow morning at 9:30.

(Whereupon, at 4:00 o'clock p.m., proceedings herein were adjourned until 9:30 o'clock a.m. Wednesday, November 23, 1955.) [972]

November 23, 1955, 9:45 A.M.

(Proceedings herein were resumed pursuant to adjournment, as follows:)

The Court: Parties ready in the Moist Cold case?

Mr. Cuningham: Yes, your Honor.

Mr. Ramsey: Yes, your Honor.

Mr. Cuninghame: May I call Mr. Ray Bohman?

The Court: Yes.

RAYMOND H. BOHMAN

was produced as an adverse witness in behalf of the plaintiff and, being duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Cuninghame:

Q. Mr. Bohman, what is your name, residence, and present occupation?

A. Raymond H. Bohman, 227 West Losey Street, Galesburg, Illinois, and I am Chief Development Engineer, Admiral Major Appliance, the Midwest Manufacturing Division at Galesburg.

Q. Are you familiar with the Admiral product exemplified by Plaintiff's Exhibit 10-A?

A. I am.

Q. Mr. Bohman, does the insulation of the cooling compartment in that exhibit permit greater heat inflow than does the [973] insulation of the freezing compartment in that exhibit?

A. Would you qualify your statement?

Mr. Cuninghame: No. I would like an answer to my question, your Honor. This is a hostile witness and I think I am entitled to a Yes or No answer.

The Court: Are you an officer of the Admiral Corporation?

The Witness: I am the Chief Development Engineer, sir.



(Testimony of Raymond H. Bohman.)

The Court: As a matter of law, he is not a hostile witness and until he shows some hostility the man——

Mr. Cuningham: I misspoke myself. I think adverse witness, your Honor, is better. He is here, as I understand it, for the purpose of testifying for the defendants.

The Court: Are you in a position to answer that Yes or No?

The Witness: I would like to have a little further explanation on the question. Does he mean——

The Court: Do you understand the question?

The Witness: Not entirely, sir.

Mr. Cuningham: May I repeat it, sir?

The Court: All right. Repeat it.

Q. (By Mr. Cuningham): Does the insulation of the cooling compartment in Plaintiff's Exhibit 10-A, the Admiral refrigerator here (indicating), permit greater heat inflow than does the insulation of the freezing compartment in that exhibit?

A. Do you mean per unit area or for the entire cabinet? [974]

Q. I mean as it stands on the floor. It's a very simple question.

A. The heat inflow?

Mr. Cuningham: May I have a Yes or No answer, your Honor?

The Court: Well, if the man can't give it—you refused to answer his other question, Mr. Cuningham. He asked you a question. He doesn't under-

(Testimony of Raymond H. Bohman.)

stand the nature of the question. Perhaps it's more complicated than you think.

Mr. Cuninghame: Very well, your Honor. I will take his answer.

The Witness: The heat inflow per unit area is the same in both compartments. The insulation material is the same and the thickness is substantially the same throughout the cabinet.

Q. (By Mr. Cuninghame): Now, did not you and I have a conversation a few minutes after the jury left this courtroom last night?

A. Yes, we did.

The Court: Mr. Cuninghame, I just want to say to you that under the rules here if you take the stand you can't argue the case and you should attempt to impeach no one unless you are willing to take the stand.

Mr. Cuninghame: My purpose, your Honor—I was not trying to impeach the witness; I am trying to clarify in my own mind—he made a statement to me that apparently, as far [975] as I can now tell, I would like to know if I misunderstood.

The Court: All right. Go ahead. I just want you to be acquainted with our rules, that's all.

Q. (By Mr. Cuninghame): Do you mean by that answer, Mr. Bohman, that the heat inflow into each of those compartments in this refrigerator here is precisely the same? A. Heat inflow?

Q. With the door closed.

A. Heat inflow depends upon a lot of factors, Mr. Cuninghame.

(Testimony of Raymond H. Bohman.)

Q. Well, I wish you would explain your answer.

A. Given like conditions, the same temperature difference across the insulation cavity per any given unit of area one square foot, we shall say, the heat flow into the food compartment would be substantially the same for that given one square foot of area as it would be into the freezer compartment. The insulation thickness is substantially the same and the material is the identical throughout the cabinet.

Q. Why do you qualify thickness by the word "substantially"? What is the difference?

A. There are a point or two upon the cabinet where there are some very small differences in dimension. If you like, I can point them out.

Q. I wish you would to the jury.

(Whereupon the witness leaves the stand for the purpose of demonstration.) [976]

A. When this cabinet is insulated either a Fiber-glass batt such as you see here is used on the sides, across the top, on the other side, and across the back, and that batt is three inches thick. If the cabinet is insulated by blowing a loose insulation fill, a wooden form or wooden and metal form is placed into the cabinet and the insulation is blown in by air pressure. That form has substantially straight sides across and takes the shape—general shape of the liner which you see over here (indicating).

Mr. Byron: The exhibit number?

The Witness: Exhibit 117. Defendants' Exhibit

(Testimony of Raymond H. Bohman.)

117. The form also includes the space required for the freezer chest, the Defendants' Exhibit 117-A. So that substantially you get uniform thickness of insulation around the cabinet.

Now, there is a spot right here (indicating), we call it the cabinet offset, where the compressor sets in on this bottom rail. At that point the insulation is somewhat less than three inches in thickness, approximately  $1\frac{7}{8}$  or two inches, if I recall correctly. But that is only in that particular spot. That was the reason I gave you the answer that I did.

Q. (By Mr. Cuningham): Have you included in your answer this additional material back here, and if not, will you please do so, this heavy insulation here (indicating)? Where does that go? [977]

A. That fits——

Q. Is that correct?

A. That is correct. And this fits over the back as is shown here (placing insulation inside refrigerator).

Q. Is that further reason why you qualified by using the word "substantially"? A. Yes.

Mr. Cuningham: Your witness.

Mr. Ramsey: No questions.

Mr. Byron: No cross-examination.

(Witness excused.)

Mr. Cuningham: Now, if your Honor please, I would like to read the Morton deposition, and I think before doing so I should—I want to point out, does your Honor have a copy of this? I have only

one. I would like to point out that there is a motion to strike that Mr. Byron told me about, beginning on page 310 at the bottom, a question there.

The Court: 310?

Mr. Cuninghame: Yes. At the bottom, the last question.

The Court: There is no 310 on this one.

Mr. Cuninghame: 310, sir.

Mr. Kolisch: I am sorry.

Mr. Cuninghame: The Morton deposition.

Here we have a photostat here.

The Court: That's all right. One is coming up right now. [978]

(Whereupon the crier hands a copy of the Morton deposition to the Court.)

Mr. Cuninghame: Now, may I say just this——

The Court: The last question on there?

Mr. Cuninghame: No, sir. It starts with the last question on 310 and runs through to the—about the middle or below the middle of 314.

Now, perhaps your Honor would like to read those pages. We do not, of course, want the colloquy, but we do want in the testimony the answers of the witness, and we want, particularly, your Honor, the end of it, beginning about the middle—well, it's the last question on 313 and the testimony at the top of page 314. That is a little different subject, I think, and it is capable of that division. There is no other motion to strike and we have been over this and we will go right through it.

The Court: The motion to strike is allowed.



Mr. Cuninghame: In toto, sir, to 313?

The Court: Yes. [979]

Mr. Cuninghame: Now, I state for the record that this deposition was taken on April 28, 1955, at the offices of the Admiral Corporation in Chicago.

Mr. Byron: That is not correct. I am not criticizing it, but it is not correct.

Mr. Cuninghame: You are right. I think it was June 1st, as I read the notices.

Mr. Byron: That is right.

Mr. Cuninghame: I was wrong, June 1st, 1955, and, as appears on Page 294, it was taken for the purpose of discovery, the last word in the paragraph, 294.

The Court: Are you going to read the entire deposition?

Mr. Cuninghame: Except the part that has been stricken, and that, of course, we take care of Friday.

The Court: Go ahead.

(Thereupon the deposition of Evans T. Morton was read into the record as follows, with Mr. Cuninghame reading the questions; Mr. Hart, the Court Crier, reading the answers; and Mr. Lucas reading the defendants.)

#### DEPOSITION OF EVANS T. MORTON

“Q. What is your name, residence and occupation?

A. Evans T. Morton, Gilbert Park, Knoxville, Illinois.

(Deposition of Evans T. Morton.)

Q. And your occupation?

A. Director of engineering for Admiral Corporation, Vice-President [980] of the Midwest Division.

Q. And how long has that been you have held that title?"

Mr. Cuningham: Well, this colloquy, I think we should read, your Honor. It has a bearing on the purpose of the deposition.

The Court: Very well.

"By Mr. Byron: Have you indicated how this witness is called?

By Mr. Cuningham: No.

By Mr. Byron: It may be well to do that.

By Mr. Cuningham: All right. I will state on the record that we meet here pursuant to an agreement made since the last deposition on April 28, 1955. The notice of the intention to examine Mr. Morton and Mr. Douglass was given on the record at that time but the date was fixed later by agreement.

By Mr. Byron: Do you want to bring out the fact it is a discovery deposition?

By Mr. Cuningham: You make any statement you want on the record.

By Mr. Byron: No.

By Mr. Cuningham: It is understood that this is a pre-trial discovery deposition of the defendant intervener, [981] Admiral Corporation.

(Deposition of Evans T. Morton.)

By Mr. Byron: Yes, taken by the plaintiff.

By Mr. Cuninghame: Correct.

Q. (By Mr. Cuninghame): Mr. Morton, how long have you been director of engineering for Admiral Corporation?

A. That particular title was given to me sometime early in 1950.

Q. And how long have you been vice-president of Midwest Division?

A. Approximately two years.

Q. I think it will save us a little time if you would just give me a brief statement of your history with the Admiral Corporation and when you came with them.

A. I started with Admiral Corporation February, 1944, and I think the official title at that time was design engineer. In any case I have been in charge of all the design and development engineering of the appliances, that is, of the refrigeration line, since that date, and since 1950 of all the appliances.

Q. And what was your occupation prior to your association with Admiral?

A. Just prior I was chief engineer of the Indianapolis plant of the—pardon me, chief inspector of the Stewart-Warner plant at Indianapolis. [982]

Q. For how long had you been chief inspector?

A. Just a little over a year in that position.

Q. That is, from roughly the end of 1942?

A. Yes, about the first of '43 to February, '44.

(Deposition of Evans T. Morton.)

Q. And prior to the first part of 1943 what was your occupation?

A. A very short period during the war as project engineer, and previous to that in charge of Stewart-Warner's development laboratory.

Q. For how long?

A. Since August of 1936.

Q. So you were in charge of the Stewart-Warner developmental laboratory?

A. That's right.

Q. Since August of 1936?                      A. Right.

Q. Up to sometime in 1943?

A. Approximately the spring of 1942 when the war was under way.

Q. What was your principal concern in the development laboratory of Stewart-Warner, refrigerators?

A. Refrigerators, yes.

Q. Did you have anything to do with the other Stewart-Warner products, you personally?

A. A limited amount. [983]

Q. Had you had any previous experience prior to August, 1936, in refrigeration?

A. Approximately two years with Norge.

Q. That is, Norge is a division now of Borg-Warner or Stewart-Warner? I forget.

A. Borg-Warner. It was at that time also.

Q. What were your duties with the Norge Division of Borg-Warner?

A. Laboratory engineer.

Q. Concerned primarily with refrigeration?

(Deposition of Evans T. Morton.)

A. Entirely.

Q. That is household refrigeration?

A. Right.

Q. Well, we have gone back pretty far, Mr. Morton. What did you do prior to that?

A. Prior to that year you would go into college, and I graduated from the University of Michigan.

Q. Formal education in engineering?

A. Yes.

Q. Well, you seem to have spent over twenty years actively in household refrigeration business, is that correct?      A. That's right.

Q. Admiral took over Stewart-Warner's household appliance business, didn't it, in 1944, or thereabouts?      A. Yes, sir. [984]

Q. And it was at that time that you came to work for Admiral, is that correct?

A. Yes; I was not part of the deal. It was a happenstance that I ended up with Admiral.

Q. What do you mean?

A. I resigned from Stewart-Warner before Admiral, to my knowledge at least, signed any agreement with Stewart-Warner.

Q. And then after the agreement was signed you went to work for them?

A. It looked like a good spot.

Q. Did others also come from the refrigeration appliance business of Stewart-Warner to the Admiral Corporation at about that same time?



(Deposition of Evans T. Morton.)

A. Not at that time. Some of the boys who had worked with me I later hired.

Q. You were the first to come over there?

A. That's right.

Q. I have a list of names, and perhaps you can give me a little thumbnail sketch of each of them. There is a Mr. George Heindenblut.

A. Mr. Heidenblut has been, I would say, my assistant with various titles since 1936 except for a period at Stewart-Warner during the war years and a short period after I left Stewart-Warner.

Q. He was employed by Stewart-Warner as your assistant [985] particularly or at least practically throughout your period at Stewart-Warner?

A. Yes.

Q. Is he still employed by Admiral?

A. He is still employed by Admiral, and as chief engineer of refrigeration.

Q. And he reports to you? A. Yes.

Q. Mr. Floyd Eck?

A. Mr. Eck worked for me at two or three different times or occasions at Stewart-Warner.

In other words, due to transfer it was not a continuous employment. I hired him later at Admiral, and he left us about 1949 to go to Deep Freeze, and later to Reynolds Aluminum Company.

Q. Metals? A. Yes, where he is now.

Q. Mr. Lou Carlson?

A. Mr. Carlson worked extra at Stewart-Warner, not for me but in another capacity in engineering for from about 1937 to about 1940, and worked

(Deposition of Evans T. Morton.)

for Admiral for a period from 1944 to about 1948 or '49. I am not sure of the date.

Q. And then he left Admiral but to go with someone else?

A. Yes. Now he is with Tecumseh Products.

Q. Where is that? [986]

A. That is at Tecumseh, Michigan.

Q. Mr. Walter Weinrich?

A. Mr. Weinrich worked with me at Stewart-Warner. He was there before I was. I hired him from Stewart-Warner about 1949 as resident engineer at Michigan and later transferred him to Galesburg, where he now is.

Q. Was he active in the household refrigeration field?      A. Yes.

Q. And still is?      A. Yes.

Q. Is that his primary concern, or do you have any reservation about that answer?

A. Mr. Weinrich is sort of a project man. He is not a graduate engineer nor has he ever functioned, I believe, strictly as such. He is primarily from a background of machining and shop work, and he has worked on projects of that nature.

Q. I notice his name appears as a patentee in one of the fairly early patents, 2,024,493, issued December 17, 1935, and assigned to Stewart-Warner, I believe, and subsequently to Admiral.

That is a patent entitled 'Refrigerator Evaporator Door.' Was he active in developmental and research work?

A. I wouldn't call it developmental work in the

(Deposition of Evans T. Morton.)

normal understanding. It is what we call gadgeteering rather than [987] engineering.

Q. And Mr. Burrise?

A. Mr. Burrise worked for Stewart-Warner Warner quite awhile before I started and up to about '47, I would think. Then he came to work for me and was under my department until approximately a year and a half ago when he was made director of quality control, I think is his proper title, at the Midwest plant for Admiral.

Q. That includes refrigerators?

A. And ranges.

Q. Mr. Schinke?

A. Mr. Schinke was assistant service manager, and he may have been service manager at the end for Stewart-Warner, and he came to work for Admiral probably late in 1944 or '45, and he is now national service manager for Admiral or director of sales, I don't know just which.

Q. Where is he located?

A. He is located in Chicago here, I think on East Water Street. I didn't pay much attention to that.

Q. In the service department? A. Yes.

Q. Can you think of any others that have come over from the Stewart-Warner refrigeration department to the Admiral Corporation?

A. No, I can't.

Q. What became of Mr. Iwashita? [988]

A. Mr. Iwashita is now with General Electric

(Deposition of Evans T. Morton.)

Company, and I believe his title is manager of the air conditioning division.

Q. What was his position with Stewart-Warner? A. He was assistant chief engineer.

Q. That is, he was the assistant to you, is that it? A. No.

Q. You were chief inspector?

A. No. I was chief inspector at the end, and I was in charge of laboratory engineering. During the refrigeration period I was in charge of the laboratory.

Q. Was Mr. Iwashita in the laboratory of Stewart-Warner?

A. He was assistant chief engineer of the engineering department, covering all engineering.

Q. That is not just refrigeration?

A. That is not just refrigeration. In other words, the laboratory is only just part of our function. There is project engineering and things like that.

Q. I see. Who was chief engineer of Stewart-Warner?

A. Two of them during the period I was there. There was Charles R. D'Olive and Russell Ayres.

Q. Where are those two people now, if you know?

A. Mr. D'Olive is on an engineering setup very similar to a manufacturer's representative setup.

Q. Is that here in Chicago?

A. I believe his headquarters are at Wilmette or one of [989] the north suburbs, I am not sure.

(Deposition of Evans T. Morton.)

Mr. Ayres is chief engineer of the St. Paul plant of Seeger-Sunbeam Corporation.

Q. Mr. Morton, what was the first household refrigerator embodying what I shall dub the moist cold feature. You understand what I mean by that, do you?       A. Yes.

Q. What was the first household refrigeration that you know of?

A. A model refrigerator built at Norge in about 1934.

Q. Was that a commercial project at all?

A. A version of that refrigerator was produced by Norge in either 1935 or 1936.

Q. Did that involve two temperatures and two compartments, one compartment being dry cold and the other moist cold?

A. I think it could be interpreted that way. It was an evaporator with a high temperature sleeve with low temperature shelving within the evaporator, built with one food liner.

Q. That is, the low temperature sleeve was designed for the storage of frozen foods in quantities, or was it not?

A. Probably one and one-half cubic foot size.

Q. Did it maintain a humid atmosphere in the main compartment?

A. I don't remember the figures, but it was a higher temperature than the so-called conventional refrigerators of that day. [990]

Q. That was the first one in your experience that made any effort at humidity control in the general



(Deposition of Evans T. Morton.)

food compartment, is that right? A. Yes.

Q. Did you ever hear of the Potter refrigerator? A. Yes.

Q. In what connection did you hear of that refrigerator?

A. As I became interested in refrigeration because of my job at Norge I would say I was familiar with most of the refrigerators that were on the market.

Q. And that included the Potter refrigerator of Buffalo, or did it?

A. I knew there was such a company. I cannot recall now whether I actually saw the Potter refrigerator at that date. The first refrigerator I remember with the so-called Potter principal was the Apex, I believe.

Q. I will show you a 20-page ad plus the title page of the merchandise section of Electrical Refrigerating News, February 24, 1932. That has previously been marked Plaintiff's Exhibit 3-U. I will ask you to glance through those pages, if you will, and let me know if you are familiar with that refrigerator. There are two types. There is a conventional and a moist cold type. It refers to the moist cold type. My question is directed to the moist cold type.

A. I cannot say I ever saw the picture, but I recall a [991] refrigerator of that general nature.

Q. Is it your impression that preceded this Norge development?

A. Not in my knowledge. By that I mean I knew

(Deposition of Evans T. Morton.)

of the Norge, because of circumstances possibly, but I knew of the Norge before I knew of the Apex or the Potter.

Q. Well, when and what was the occasion when you knew of the Potter or Apex refrigerator first?

A. I can't tie that to any definite time.

Q. Was it while you were at Stewart-Warner or was it while you were at Norge?

A. I believe after I was with Stewart-Warner.

Q. Did you have any part in making any tests on this so-called Potter refrigerator at Stewart-Warner?

A. I have no memory of ever running a test on the Potter refrigerator.

Q. Did you ever see one of these moist cold refrigerators of the Potter Company at Stewart-Warner's laboratory on test?

A. I don't believe I did.

Q. You don't now recall?

A. Definitely not.

Q. Who would be in charge of such testing, say in about 1935 or 1936 at Stewart-Warner?

A. Previous to the time I came to Stewart-Warner there was a gentleman by the name of Chamberlain. I don't remember his [992] first name nor do I know much about him, because he had left I could guess about four to five months before I arrived, and during that four to five months the laboratory was not in use."

Mr. Cuningham: Skipping now to the last question on Page 314:

(Deposition of Evans T. Morton.)

“Q. Now, as you have already told us, you decided the Admiral proposed business in household refrigeration was attractive; then did you have in mind a continuance of this particular structure shown in Defendants’ Exhibit 111? A. No.

Q. Was it a modification of that particular structure or perhaps you can tell me from memory what it was?

Tell us in your own words, Mr. Morton, what the structure was that was contemplated at that time by Admiral in 1944?

A. Admiral gave me no specific instructions at that time except they wanted to continue the two-temperature, and the problems that arose from the Stewart-Warner system at that time were inability to service as an hermetic system and the period that Admiral was to provide that type of service system, which led us into a completely different path.

Q. Did you undertake responsibility for such a development, Mr. Morton? [993] A. I did.

Q. I think it will be easier and quicker perhaps if I can show you, Mr. Morton, the Admiral interrogatory Exhibits C through F which I am sure you are quite familiar with. They have been furnished us in this case.

Perhaps to be chronological about it I will select Exhibit C, which I might say according to my understanding is the first two-temperature Admiral construction that came on the market in, I believe, 1947 or 1948.

Could you compare that generally or point out

(Deposition of Evans T. Morton.)

changes in that refrigeration circuit over that of Defendants' Exhibit 111?

A. You are speaking now of refrigeration circuit?"

Mr. Cuningham: Your Honor, it seems to me that perhaps I should use our exhibit numbers here.

The Court: Yes, I do not know what 111 is.

Mr. Cuningham: Your Honor, I can show you it in Plaintiff's Exhibit 6-B.

The Court: Where is that exhibit?

Mr. Cuningham: I beg your pardon?

The Court: Don't you have an exhibit here?

Mr. Cuningham: Yes, it is a part of this record here, and I would like to show it, if I may, to your Honor. It is that one-page diagram. I did not mark it separately. (Presenting [994] document to the Court).

The Court: All right; tear it out of the book and mark it separately.

Mr. Cuningham: Well, your Honor, may I preserve this book and present another copy? I have another copy.

The Court: You have another copy?

Mr. Cuningham: I am afraid not here, but we do have it.

The Court: 111 is just a diagram anyway?

Mr. Cuningham: Yes, sir. The other exhibits that I should identify——

(Discussion off the record.)

(Deposition of Evans T. Morton.)

Mr. Cheatham: Your Honor, the Admiral Interrogatory Exhibits A through N, inclusive, have been identified, and are in before the Court, as Exhibits 4-CC-1 to 4-CC-14, inclusive. They have been marked, and they have been presented.

The Court: Have you told the clerk which ones you want?

Mr. Cheatham: And also which have not been presented yet, the Morton exhibits are 3-GG to 3-HH, which are exhibits which have been——

The Court: Are you going to read from the interrogatories?

(Discussion off the record.)

Mr. Cuningham: He is ahead of me, your Honor. These are simply the interrogatories, the interrogatory exhibits. [995] I identified them as A to F.

Mr. Cheatham: The one which Mr. Morton is deposing about, in comparison with Defendants' Exhibit 111 of the Stewart-Warner record, is Plaintiff's Exhibit 4-CC-3 in this case, Admiral Interrogatory Exhibit C.

The Court: All right.

“Q. (Continued): Could you compare that generally or point our changes in that refrigeration circuit over that of Defendants' Exhibit 111?

A. You are speaking now of refrigeration circuit?

Q. Yes.



(Deposition of Evans T. Morton.)

A. The refrigeration circuit in the Stewart-Warner was through cold plate with a differential pressure control which was eliminated from the Admiral. In the Admiral we cool the food compartment with a secondary system. The system was hermetic in the sections of the refrigerator where the Stewart-Warner was a valve, and a flare nut connection.

I think in general that would cover it.

Q. And you made use of a so-called primary and secondary transfer plate in the Stewart-Warner system, did you not?      A. That is right."

(Discussion off the record.)

Mr. Cuningham: Mr. Lucas is absolutely right. There [996] is a mistake that I did not catch. It should be "Admiral" instead of "Stewart-Warner."

Mr. Byron: Would you read the whole question, please?

Mr. Cuningham: Yes.

"Q. And you made use of a so-called primary and secondary transfer plate in the Admiral system, did you not?      A. That is right.

Q. That is not true of the Stewart-Warner box, is it?      A. It is not.

Q. Now, are those the principal differences in this construction shown in the interrogatory, Exhibit 4-CC-3, over that of Defendants' Exhibit 111?

A. I believe that would have been considered the basic differences in the systems.

(Deposition of Evans T. Morton.)

Q. Now I will show you Admiral's Interrogatory Exhibit 4-CC-2 and ask you if the same is not generally true of that? A. It is.

Q. What if any major differences are there between Exhibits 4-CC-2 and the one you looked at before, Exhibit 4-CC-3?

A. Merely a modification and the design of elements; no basic differences.

Q. No basic change in the system? A. No.

Q. Is that also true of Interrogatory Exhibit 4-CC-4 and [997] 4-CC-5 and 4-CC-6, which I show you now? A. Yes.

Q. And do those exhibits illustrate the refrigeration system used in the following model numbers? Can you identify these from the model numbers? A. I can.

Q. I will read from a list furnished in the Admiral Interrogatory Exhibit 4-CC-1. Model No. 958.

A. Let me check those very early ones.

Q. That is the first one, I believe.

A. Yes.

Q. No, I have an earlier one. Model No. 759.

A. That is not an earlier one, I don't believe. I think it is a later one, modelwise. That is right, though.

Q. But it is the same refrigeration system?

A. Yes.

Q. 959? A. Yes.

Q. 1090? A. Yes.

Q. 1390? A. Yes.

Q. 1191? A. Yes.

(Deposition of Evans T. Morton.)

Q. 1192? [998] A. Yes.

Q. 1192W? A. Yes.

Q. 1292? A. Yes.

Q. 11C15? A. Yes.

Q. 12C15? A. Yes.

Q. 12C15A? A. Yes.

Q. Now, are there any other model numbers embodying that same refrigeration system, that you recall? A. Covering any particular period?

Q. Yes, from December 15, 1948, through October 6, 1953. A. I know of no others.

Q. What was the upside down combination of the two-door?

A. That was a refrigerator that was made in 1954.

Q. Did that embody the same circuit?

A. There is a different circuit in that one.

Q. That, however, had a humid cold?

A. Yes.

Q. In the general food locker, is that correct?

A. Yes. The general food compartment, freezing locker and general food compartment, yes. [999]

Q. The reason you call it that is that you had a freezing compartment below and a general food compartment, is that correct?

A. That was an advertising decision.

Q. Can you tell me in a shorter way what differences there were in that circuit?

A. It is not going to be very short.

Q. All right. A. It was a combination——

(Deposition of Evans T. Morton.)

Q. Did that embody primary and secondary sets of expanders?

A. That did not. Pardon me, I will have to retract that. There are two expanders with again a pressure difference between the expanders and with the bypass on one of the expanders. It was quite a complicated system compared to other systems we have made.

Q. Did that make use of your so-called restrictor?

A. Well, no, not in the sense that the Cold-Temp did. It did make use of the shutoff valve; similar in experience but different in action."

Mr. Cuninghame: I suppose there should be a correction there. It is Dual-Temp; not Cold-Temp, isn't it?

Mr. Byron: I don't know. Leave it the way it is, what the witness said. [1000]

"Q. Those expanders were in series?

A. They were so arranged they were being put either in series or parallel.

Mr. Byron: Are you referring now to 1954?

Mr. Cuninghame: Yes.

Q. These are all differences in the pre-1954 models?

A. They are different from the 1954 models. [1001]

Q. That is what I mean. I would like to ask one other question.

I direct your attention to Siragusa Exhibit 7

(Deposition of Evans T. Morton.)

which I will identify in this case as Plaintiff's Exhibit 3-FF.

Mr. Byron: Your Honor, I don't care if this goes in or not, but the fact is——

Mr. Cuningham: Your Honor, I don't either. I think I will skip it.

Mr. Byron: It has no bearing at all. It's about an experimental refrigerator that is now being worked on. The patent expired.

Mr. Cuningham: I guess we go to 324.

“Q. Mr. Morton, are you familiar with the patents owned by the Admiral Corporation on household refrigerators generally?

A. In general, yes.

Q. I hand you now what I believe to be a substantially complete volume of those patents, with an index. Could you help us out by indicating any particular patent that discloses a refrigerator or refrigerator circuits of the Stewart-Warner devices you have testified about?”

Mr. Cuningham: I should change that to Admiral. I corrected it later on.

“Q. I mean, using the same question, Admiral devices you have testified about. [1002]

A. To my knowledge there were no patents taken by Stewart-Warner on the refrigerator circuit of the nature of the one that was used.

By Stewart-Warner on the system that was used.

Q. Now, was there any attempt made to get a patent on that system, by Stewart-Warner?



(Deposition of Evans T. Morton.)

A. I do not believe there was an attempt made to obtain a patent. I am not qualified to answer that for certain, because I was not at that time in a position where that was my responsibility.

Q. Now I will ask you the same thing with respect to the Admiral Corporation structures and the Admiral Corporation patents.

I will ask Mr. Morton to identify, if he can from that volume of Admiral patents, any that will help us understand the refrigerator circuits which he has just testified about in the commercial Admiral boxes, and identify the patents with the particular circuit. This is an effort to shorten the testimony and get the information about the patents. Of course I mean the disclosure and not the claims necessarily, but just so we can understand the circuits.

A. There are two patents, and I will have to identify them for my own purposes. There is one covering the system and one covering a cabinet.

Q. The drawing would help you with the disclosure? [1003]

A. Right here (indicating). This is the system patent, the basic system patent we have got.

Q. Now will you read the numbers for the record?

A. It shows a cabinet and so forth. That is the system patent that was taken out by Admiral.

Q. Would you read the number so we will have that in the record?           A. 2,586,853.

(Deposition of Evans T. Morton.)

Do you want the other patents that might apply to that system?

Q. Yes, that were disclosed.

A. 2,601,549, covering a restrictor or valve.

Q. This is as to the models you have testified to prior to the upside down model, is that correct?

A. That is right, the models prior to the upside-down model built by Admiral.

Q. Mr. Morton, those are the models I read from the interrogatory list.

A. That question was specifically directed to the refrigeration circuits?

Q. Yes. A. I believe that covers it.

Q. What have been your duties in connection with these refrigeration patents since you came with Admiral, Mr. Morton, in general? Are you actively helping Mr. Douglass in connection [1004] with these patents and the pending applications?

A. Basically to point out to Mr. Douglass developments, leaving to his judgment beyond that, and to assist him where he needs assistance which we can offer.

Q. Have you acquired certain familiarity with the patent article?

A. Some familiarity and a lot of confusion.

Q. Does that answer include the Potter patent in suit?

A. I have looked at the Potter patent, yes.

Q. I will show you a copy of the Potter patent in suit, reissue 23,058, and state the drawing and

(Deposition of Evans T. Morton.)

specification were identical with the original. Are you familiar with that?

A. I have seen it and have read it. When you say 'familiar' not in detail, no.

Q. What was your purpose in reading it? As you now recall it, of course.

A. When this last suit was brought is the first time I ever saw or read the reissue patent.

Q. Would the same be true of the original? I have a copy of that.

A. The original I was interested in and read and saw either before I left Stewart-Warner—before that, because it was a normal interest, I think, in the suit Potter had with Stewart-Warner.

Q. Just to be sure, I will show you a copy of the original [1005] patent. I think there are no changes except in the claims.

What did you do in connection with that suit against Stewart-Warner?

A. Practically nothing except read about it. I did do some—I did not directly myself do anything, but one of the men that worked for me did some work on his own for compensation for the law firm of which Mr. Hinkle was a member.

Q. And which represented Stewart-Warner in that suit? A. That's right.

Q. Did you have occasion yourself to consider this original Potter patent in the light of the prior art cited in that suit?

The Witness: Will you say that again?

(Deposition of Evans T. Morton.)

(Whereupon, the question was read as above recorded.)

A. Only in the way that we consider all the patent art at the time we developed the first Admiral.

Q. (By Mr. Cuninghame): No. Not while you were with Stewart-Warner? A. No.

Q. Did you consider the Anderson patent number 1,039,051, copy of which I show you?

A. That patent also I became familiar with because of my own personal interest in the Stewart-Warner suit.

Q. Did you consider that as the closest prior art?

A. I don't think I can answer that question. [1006] I don't think I can honestly answer that question. I felt that neither one was close to what we were doing.

Q. At Admiral? A. At Admiral, yes.

Q. You did not yourself—and I am trying to get this testimony clear if I can—compare the Anderson patent with the Potter patent? A. No.

Q. Are you prepared to testify as to any differences between those two structures, the Anderson and the Potter?

A. With sufficient time for study I believe I could.

Q. Well, maybe it won't require study.

Mr. Cuninghame: The answer is what?

A. The answer would be no.

Q. As I understand you, you have considered both the Anderson and the Potter patent in the

(Deposition of Evans T. Morton.)

light of the structures you contemplated at Admiral?      A. Only in a very general way.

Q. Now, the Anderson patent expired in 1939? It expired in 1939, that's right, December 19, 1939. Prior to your association with Admiral, wasn't it?      A. Five years prior.

Q. However, this Potter patent had not expired when you first undertook this development work at Admiral, had it?

A. The answer is it had not." [1007]

Mr. Cuninghame: I will state for the record the patent referred to was the original of the patent in suit No. 2,056,165.

"Q. Did you therefore consider the original claims and their bearing upon that work at Admiral?

A. I think I should answer that question that I depended on patent counsel that we had to review our development and pretty much ignored patents in the development.

Q. You do know that this Potter patent was discussed, however, and considered by them, do you not?      A. I would say yes.

Q. Did you obtain any advice from these patent lawyers with respect to the infringement of the claims of that original patent? By you I mean the Admiral Corporation.

A. I can answer that myself in that I worked directly with Glen Muffly and depended on his advice.



(Deposition of Evans T. Morton.)

Q. Mr. Muffly is not an attorney, is he?

A. He is not.

Q. What was his advice with respect to the claims of this original Potter patent?

A. Mr. Muffly in conversations I had with him felt that we were not infringing on the Potter patent. I don't recall that he specifically mentioned that one, but I do know that after review they were not in the patents that he advised we might be infringing.

Q. Did he furnish you any advice in writing as to those [1008] patents?

A. I have none that I know of. Mr. Muffly and I worked almost entirely with conferences.

Q. During what period was that?

A. I worked closely with him in 1944 and '45 and used his services less and less since that period, and very seldom any more.

Q. Were any records kept of these conferences by you?      A. No.

Q. Do you recall any other correspondence or other writings regarding this advice?

A. Everything I could—I have turned over to Mr. Byron. It is very little.

Q. Is Mr. Muffly still with Admiral Corporation?

A. No, on a retainer basis for a number of years, and on occasion will make a search through his rather extensive files covering anything he may be asked about.

(Deposition of Evans T. Morton.)

Q. Now, Mr. Morton, what if any work have you done in connection with the instant suit on the Potter reissue patent?

A. With the present suit?

Q. The one in which we are now acting.

A. Nothing except spend a little time discussing it with Mr. Byron and Mr. Ramsey.

Q. When were those discussions held, approximately? [1009]

A. Approximately ten days ago, I think.

Q. Have you done any work with Mr. Muffly on this?      A. No.

Q. Have you considered the claims of the reissue patent at all?      A. No.

Q. You have read the claims, haven't you?

A. I have read the claims.

Q. Mr. Morton, I would like to ask you a series of questions that have been asked in this case in former interrogatories to the original defendants. They were allowed as such interrogatories and answered in a fashion by the original defendants, and I believe that without exception the answers were 'Do not know,' 'Not qualified to answer, too technical.' "

Mr. Byron: Your Honor, I think by explanation we should say that those interrogatories were directed to the president——

The Court: Yes.

Mr. Byron: What is that? The President of the Meier & Frank Company, and I believe the Presi-

(Deposition of Evans T. Morton.)

dent of the Lou Johnson Company. Of course, Admiral knew nothing about the structures.

Mr. Cuninghame: That is correct.

The Court: At the time that neither Admiral nor Amana were parties to this litigation?

Mr. Byron: That's correct, your Honor. [1010]

"Mr. Cuninghame: Q. Mr. Morton, I hand you this copy of the answers to the interrogatories.

I hand you now, Mr. Witness, my copy of the answers of Meier & Frank, the numbers opposite the answers corresponding to the questions I now ask you, and you will thus have before you the answers that have already been made. I believe my characterization of them is almost 100 per cent correct. There are so many I can't be sure. I have not checked them all, but will you check them and will you please try to give me the information called for in the questions? There is no information given in the answers there.

I will begin with Interrogatory No. 31 which is—no, I will skip that one. That one was answered. I will begin with Interrogatory No. 34:

'In the normal operation of the Admiral refrigerator, Model 1090, does the air in the cooling compartment have a substantially stable temperature of about 40 degrees Fahrenheit?'

A. Under use conditions, do you mean?

Q. In normal operation.

A. I would say no refrigerator has, including that one, because there is a major change in the

(Deposition of Evans T. Morton.)

temperature with any addition of loads and doors opening.

Q. With those exceptions is the temperature at 40 degrees Fahrenheit substantially stable? [1011]

A. If you will ask me if it is substantially stable under standard operating conditions with the door closed and no additional heat or food added then I would say it is substantially stable at a temperature below 40 degrees.

Q. How much below?

A. Two to four degrees, depending upon the manufacturing variances.

Q. Now question 36:

'In the normal operation of the Admiral refrigerator, Model 1090, does the air in the cooling compartment have a humidity whose relative value is 100 per cent at 32 degrees Fahrenheit?'

A. Yes.

Q. Question 38:

'In the normal operation of the Admiral refrigerator, Model 1090, does the air in the freezing compartment have a temperature well below 32 degrees Fahrenheit?'

A. Yes.

Q. Question 40:

'In the Admiral refrigerator, Model 1090, does the cooling compartment have a refrigerant expander associated therewith which has heat-conducting surfaces so constructed and arranged [1012] as to be maintained during normal operation at a temperature above 32 degrees Fahrenheit while withdrawing heat from the cooling compartment

(Deposition of Evans T. Morton.)

to maintain the air in the cooling compartment at a substantially stable temperature of approximately 40 degrees Fahrenheit?’

The Witness: There is no direct answer to that question.

Q. Do you have any difficulty understanding that question?

A. There is no direct answer to a question taking in as many variable components and so forth, as you brought out there.

Q. Well, in that refrigerator does the cooling compartment have a refrigerant expander which has heat-conducting surfaces so constructed and arranged——

Mr. Byron: Put in the word ‘within.’ You had that in the question.

Q. (By Mr. Cuningham): I wonder if it would help you any if you took these in by eye rather than by ear. I will hand you a file copy of the same question. Well, I think I will show you my own copy.

Mr. Byron: Why don’t you take the claim?

Mr. Cuningham: That is question 40.

Mr. Byron: This question is not in line accurately with the claims in issue.

The Witness: There are so many ifs connected with that [1013] question it is hard to give you an answer.

Mr. Cuningham: I am not insisting on a yes or no answer. Give me whatever answer you want.

A. I believe I would have to answer that the



(Deposition of Evans T. Morton.)

refrigerant expander indirectly retains the temperature; it does not directly withdraw the heat from the compartment.

Q. I am afraid I don't understand what you mean by the word 'indirectly.' Do you mean through some other media?

A. Through the walls of the liner. The expander in the sense you are using it here, I believe, is the tube through which the refrigerant is circulating?

Q. That is correct.

A. The expander is not in contact with the compartment itself; it is in contact on the outside walls with it.

Q. Is there any thermal conducting contact with the outside walls?      A. Yes.

Q. Or is it the inside walls?

A. It is the thermal contact with the outside walls.

Q. The outside walls of the food compartment?

A. Yes.

Q. Do those function as fins for the tubes?

A. Not in the normal sense we use the word 'fins,' no.

Q. Would you explain that?

A. A fin in the term as I understand it is soldered, pressed [1014] or bonded closely, mechanically bonded or bonded by means of welding or brazing to the surrounding cool——

Q. Wait. Are these tubes attached or affixed in any way to the liner?

(Deposition of Evans T. Morton.)

A. They are attached by virtue of springs which retain.

Q. Does that make an effective thermo connection?"

Mr. Byron: I think it may be of value for the Court and jury to appreciate what that means. I can point it out if you so desire, what these things are. Now, calling attention to Defendants' Exhibit 117, the question is whether or not these coils were secured to the outside of the liner, and the witness is explaining that there are springs which pull——

The Court: Mr. Byron, this is Mr. Cunningham's deposition.

Mr. Cunningham: I was afraid it would be long, that's all, your Honor.

The Court: And he will permit you to do it with another witness. You have Mr. Glen Muffly in the courtroom?

Mr. Byron: I just thought it would be informative, that's all.

The Court: I am going to let Mr. Cunningham try his case the way he wants to, so long as he doesn't violate any rules. [1015]

Mr. Byron: Well, probably I should not have said what I did.

The Court: Where do we start?

Mr. Cunningham: "Q. Does that make an effective thermo connection?

A. If by effective you mean efficient it is not too efficient, no. That is why I differentiate between that and fins.

(Deposition of Evans T. Morton.)

Q. These are not as efficient as fins, but they serve the same purpose less efficiently, is that your testimony?

A. Fins are an extension of the primary surface which we speak of as the tube itself. The secondary surface in a coil is spoken of as the fins and would normally be an efficient bonded arrangement.

You are trying to get me to say on a matter of degree that a tube a foot from the surface would also be an inefficient arrangement of a fin, if I accepted your definition.

Q. Your liners are a so-called secondary heat-exhausting surface, are they not, in the Admiral Model 1090 and later models?

A. In the same way that a floor is a secondary surface in a floor-heated building.

Q. Have you anything else to add to that answer to Interrogatory No. 40?

A. Again, the substantially stable temperature of 40 degrees is not a true condition under use. [1016]

Q. As you have explained before?

A. Yes.

Q. Is there anything further? A. No.

Q. Now, the next interrogatory which I would be glad to handle in the same fashion if it helps any, is Interrogatory No. 42:

‘In the Admiral refrigerator, Model 1090, does the freezing compartment have a refrigerant expander associated therewith which has heat-conducting surfaces constructed and arranged to be

(Deposition of Evans T. Morton.)

maintained during normal operation at temperatures well below 32 degrees Fahrenheit while withdrawing heat from the freezing compartment?’

A. On the basis of the way it is stated the answer is yes.”

The Court: How about page 358, “That it is not in the precise language of the claim”?

Mr. Cuninghame: Yes. That’s it, sir. Thank you.

“That it is not in the precise language of the claim.

A. Speaking of the tubes as an expander the expander is not in the compartment.

Q. (By Mr. Cuninghame): The next question is No. 44:

‘In the Admiral refrigerator, Model 1090, [1017] is there a volatile refrigerant circulated through the expanders?’ A. No.

Q. Will you explain that answer, please?

A. The question is stated on the basis of a single refrigerant going through both expanders, and that is not true.

Q. Is there a single refrigerant in each expander in the accused device?

A. This covers from 1948 to 1953?

Q. That is right.

A. There are two different refrigerants in the expanders.

Q. That is not my question, sir. If I ask you if there are two different refrigerants or two expand-

(Deposition of Evans T. Morton.)

ers perhaps you will tell me whether there is a single refrigerant in each expander.

A. There is a single refrigerant in—wait.

Are you asking if the same refrigerant is in each expander?

Q. No, sir.

A. Or the same type of expander?

What was the question?

Mr. Cuningham: Perhaps the question should be read.

(Whereupon, the question was read as above recorded.)

A. There is a single refrigerant in each expander. [1018]

Q. (By Mr. Cuningham): Thank you. The next question is No. 46:

‘In the Admiral refrigerator, Model 1090, is there a single liquefying unit associated with the expanders and so constructed and arranged as to condense refrigerants expanded by heat extracted by the expanders from both the cooling compartment and the freezing compartment?’ A. No.

Q. Will you explain that answer, please?

A. The liquefying unit is so arranged as to liquefy the refrigerant circulated through the freezing locker. The refrigerant of the food liner is liquefied by a condenser associated with the secondary system.

Q. Do those condensers operate independently?



(Deposition of Evans T. Morton.)

A. There is only one condenser. You don't have a condenser in the secondary system.

Q. Do I understand your testimony to be that there are two liquefying units in the whole construction, one being associated with the expander in the freezing compartment and the other associated with the expander in the cooling department?

A. Yes, sir.

Q. Are those independent of each other?

A. By that you mean will either one work independently of [1019] the other?

Q. Do they work independent of the other, as a matter of fact; to which there should be no disagreement. If we are reasonable men we don't disagree about facts.

A. It is necessary to have a condenser of a secondary system at a lower temperature than the evaporator of the same system, and on that basis the refrigeration effect is provided by the freezing locker liquefying unit.

Is that what you are driving at?

Q. The freezing effect of what? The expanders in the cooling compartment?

A. The expander in the cooling compartment. Part of that expander in the cooling compartment is attached to the condenser of the secondary system.

Q. And actuated thereby? A. Yes.

Q. The next question is No. 48:

'In the Admiral refrigerator, Model 1090, is a

(Deposition of Evans T. Morton.)

volatile refrigerant circulating through expanders the sole heat extracting medium?’

A. I would have to answer that no.

Q. Why?

A. Since there are two refrigerants.

Q. Are they both volatile?

A. They are both volatile, yes. [1020]

Q. Have you completed your answer?

A. Yes.

Q. Now Interrogatory No. 50:

‘In the Admiral refrigerator, Model 1090, is there a thermostat responsive to the temperature in one of said compartments, which controls the operation of a single liquefying unit?’

A. I would answer that no, since the thermostat is outside of the compartment.

Q. Have you finished your answer?

A. Yes.

Q. Now Interrogatory No. 52:

‘In the Admiral refrigerator, Model 1090, is there a single control responsive to a condition reflecting the temperature maintained in one of said compartments which controls the operation of a single liquefying unit for circulating a volatile refrigerant through the expanders?’

A. I would say no, since it circulates through only one expander.

Q. Is that your only reason for a no in answer to that question? A. Yes. [1021]

Q. Let me ask you a couple of questions:

(Deposition of Evans T. Morton.)

Mr. Morton, I will show you a copy of your patent numbered 2,061,350."

Mr. Cuninghame: Just a minute. This may not be pertinent, your Honor. No, it's pertinent.

"What is the moist control in that patent?

The Witness: That particular arrangement as shown here was never actually produced. We will just check that to be sure.

That was a model that was designed, but schedules were canceled.

For this particular model the schedules were canceled out and we never produced it. It was Admiral CD746 and 946. In 1945 or 1946 was when it was originally planned for.

Q. (By Mr. Cuninghame): Do you recall the reason for not going through with your plan?

A. Primarily the shortage of steel that existed at that time.

Q. And the plans were never resurrected?

A. No, not in the direction this design took.

Q. Can you tell me what patents of yours or under which you are licensed are marked on the models, the list of which I read to you?

Can you also tell me from that volume of patents or glancing through the index or drawings which ones have [1022] ever been commercially used by Admiral?

A. That would take considerable time for me to study that through.

(Deposition of Evans T. Morton.)

Q. Would you do so? You have copies of those patents.

A. If my files have not been robbed. With Mr. Ramsey, I would say I have.

Q. Maybe not today, but in this volume there was a complete list of the Admiral patents or the patents owned by Admiral, and there is a complete list of the refrigeration patents, and I am limiting it to that, under which Admiral is licensed. That information is available to you through Mr. Byron or through me, if you want it, and if you have copies, as I understand you do, of your own patents and licensed patents, would you mind advising Mr. Byron by letter so he can advise me which ones have been used commercially?"

The Court: Well, what is the relevancy of that statement?

Mr. Cuningham: Well, we were digging out the information.

The Court: Let's read only those portions which have some probative value.

"Mr. Cuningham: Q. Has Admiral Corporation issued any licenses in household refrigeration filed under any patent it owns or has license rights under?"

Mr. Byron: I think that has no pertinency here whatsoever. [1023] I think it was so settled yesterday in conference.

Mr. Cuningham: On the contrary, your Honor.

(Deposition of Evans T. Morton.)

I think it was settled as to the reverse and it was part of the hypothetical question.

The Court: Well, the man doesn't know anything so——

Mr. Cuningham: Well, your Honor, he tells us that there were a number of licensees under it. That's something.

The Court: All right. Go ahead.

Mr. Cuningham: I will skip the next answer he gave and ask the next question. [1024]

“Q. To whom is that license issued, do you recall?”

The Court: Well, he says, “I believe there is one covering a refrigerator door gasket.” Now you can go ahead, “To whom is that license issued, do you recall?” Page 368.

“A. There are a number of licensees under that patent. I cannot give you the names for sure of any specific one, or the rubber companies.

Q. Can you pick out that license number there in the index?

A. The index merely gives numbers and names.

Q. Was that your patent? A. Yes.

Q. That it gets down to half a volume, anyway.

A. I believe that is 2,636,228, but I would appreciate it if you would have Mr. Douglass verify it.

Q. What date is that?

A. April 28, 1953.



(Deposition of Evans T. Morton.)

Q. Can you recall the names of any of the licensees?

A. I would not be certain of any name I would give you.

Q. But it is your impression a number of licensees are involved? A. Yes.

Q. And I suppose since the issue?

A. That's right.

Q. Do you have any knowledge of the royalty rate? [1025]

A. I am not certain myself. I believe it is in the nature of probably a cent or a cent and a half. Mr. Douglass could answer that.

Q. Per gasket? A. Right.

Q. How many gaskets are used in a refrigerator?

A. Generally one. I know of no one using them that would use more than one gasket. Possibly on a two-door there might be two.

Q. Are there any other patents that you recall as being the subject of licensing by Admiral to anyone else? A. I do not know that.

Q. Do you know whether these licenses to Admiral Corporation from General Electric, Westinghouse and General Motors were also licensed to others in the industry than Admiral?

A. I do not know for certain. I would believe they have been.

Q. The General Motors license, I will point out for the record, was amended January 21, 1948, because of a more favorable clause in the Admiral

(Deposition of Evans T. Morton.)

license, which would indicate there were other licensees.

You have no idea how widespread or liberal that license was of any of these three concerns, have you?

A. It was my impression they were willing to license to anyone. [1026]

Q. Was it your impression that most manufacturers took a license under these, or do you know?

Mr. Byron: I don't believe he would know.

The Witness: I don't believe I am in a position to answer that.

Mr. Byron: Is that all?

Mr. Cunningham: All right; I believe that is all."

The Court: Does that conclude the deposition?

Mr. Byron: No; we wish to offer in evidence the license agreements in which General Motors granted a license to Admiral, General Electric granted a license to Admiral, and Westinghouse granted the license to Admiral, and those——

The Court: Is there any objection?

Mr. Cunningham: I do not see the pertinency of them at the moment.

Mr. Byron: I will explain the pertinency, your Honor. The license agreement from General Motors to Admiral, marked Plaintiff's Exhibit 3-KK, indicates or shows that the royalty rate was 25 cents per refrigerator, and there were at least eight patents involved in that license, a total, a royalty

rate of 25 cents under the eight patents. That is pertinent in connection with the royalty rate.

The Court: I think so, Mr. Byron. The only thing that I was concerned about is, is this the proper time to introduce [1027] those exhibits, or should they be introduced on the defense case in chief? That is the only question I am raising.

Mr. Byron: Yes, and the answer is, your Honor, these are their exhibits. They called for them. Now apparently they do not want them in. We do.

The Court: Were they identified?

Mr. Byron: Yes, they were.

The Court: In the deposition?

Mr. Byron: In the deposition, yes, and in the pre-trial.

The Court: They have elected not to offer them?

Mr. Byron: Yes.

Mr. Cunningham: No, we marked them—he is using our copies.

The Court: Are you offering them, Mr. Cunningham?

Mr. Cunningham: Not at this time, your Honor. I do not think it is proper. I do not think they are relevant.

Mr. Byron: Defendants are offering them.

The Court: They may be admitted. If you do not offer them, the defendants can offer them now.

Mr. Cunningham: I will identify these. The license agreement from General Motors, Frigidaire Division, to Admiral is identified as Plaintiff's Exhibit 3-KK. It is now offered in evidence.

The Court: It may be admitted. [1028]

(Document, License Agreement above referred to, heretofore identified as Plaintiff's Exhibit 3-KK, was received in evidence.)

The Court: Where are they referred to in the deposition? I do not see it. You said they were identified.

Mr. Cuninghame: My recollection is, your Honor, that Mr. Byron sent these to me at a later date for the deposition, and we, of course, have had them here right along. They are part of our marked exhibits, but I do not see the pertinency of them.

The Court: Go ahead. I have already ruled on that.

Mr. Byron: The license agreement from Westinghouse Electric Corporation to Admiral Corporation identified as Plaintiff's Exhibit 3-JJ is now offered in evidence.

The Court: It may be admitted.

(Document, License Agreement referred to, heretofore identified as Plaintiff's Exhibit 3-JJ, was received in evidence.)

Mr. Byron: There is the license agreement between Westinghouse Electric Manufacturing Company to the Admiral Corporation identified as Plaintiff's Exhibit 3-II. It is now offered in evidence.

The license agreement from General Electric Company to Admiral Corporation identified as Plaintiff's Exhibit 3-GG is now offered in evidence. [1029]

Mr. Cuningham: If your Honor please, I think those exhibits are incomplete without copies of the patents licensed. We have got no full information, and this is a big picture we are opening the door to here, and I think he ought to include the patents licensed so we can see what they were.

The Court: Mr. Cuningham, that is precisely what I told you yesterday before you asked the hypothetical question about the gasket. I told you that very thing, but you insisted upon asking the question, and I am going to rule the same way for Mr. Byron as I did before.

Mr. Cuningham: Your Honor, my gasket patent was in evidence, but I will stand on the record.

Mr. Byron: The license between General Electric Company dated August 28, 1950, and Admiral Corporation, identified as Plaintiff's Exhibit 3-HH, is now offered in evidence.

The Court: They may be admitted.

(Documents, License Agreements heretofore referred to as Plaintiff's Exhibits 3-GG, 3-II and 3-HH, were thereupon received in evidence.)

The Court: What about the cross-examination? Are you abandoning that, or do you propose to read the questions propounded to the witness?

Mr. Cuningham: There are just a couple of pages of it, [1030] your Honor.

The Court: I am not objecting to it. I am just asking him whether he is going ahead.



Mr. Byron: Yes, we will just take a couple of minutes.

The Court: Then there is some redirect.

Mr. Cuninghame: It may be my duty to read the cross, as a rule, as I understand it.

Mr. Byron: I do not understand that.

The Court: These are the questions propounded by Mr. Byron, and Mr. Byron or somebody designated by him will ask those questions, in accordance with our previous understanding.

Mr. Cuninghame: They are discovery depositions.

The Court: That is right.

Mr. Cuninghame: I have no desire to read them. I am just trying to abide by the rules.

The Court: Go ahead, Mr. Byron.

(Thereupon, the reading of the deposition of Evans T. Morton was continued as follows:)

## DEPOSITION OF EVANS T. MORTON

### “Cross-Examination

By Mr. Byron:

Q. Near the end of your deposition, the direct examination, Mr. Cuninghame read several interrogatories under Rule 33, addressed to the defendant Meier & Frank Co., [1031] Inc., and asked you to answer certain of those interrogatories.

Had you ever seen or heard any of those interrogatories before you testified here today?

A. No.

(Deposition of Evans T. Morton.)

Q. In your direct examination I gained the impression that Admiral Corporation ignored patents of others in the development of its refrigerators. What is the fact?

A. That is not true. What I meant to state was that because of the multiplicity of patents in this industry, something in the neighborhood of I think seventy-five to eighty thousand, it proceeds with the development in the initial stages, ignoring patents, and when development is in a stage where it seems that practical results can be obtained we immediately go to patent counsel for a review of the design to determine whether or not we are in any way involved in patent problems. Is that clear?

Mr. Byron: That is clear, yes. The cross-examination is closed."

#### "Redirect Examination

By Mr. Cuninghame:

Q. I will show you, Mr. Morton, one of several advertisements of the Admiral Corporation, or a photostatic copy of one of those which has been furnished me by Admiral, and which unfortunately did not come with a date." [1032]

Mr. Cuninghame: I offer as Plaintiff's Exhibit 3-LL this group of Admiral advertisements furnished by the Defendant Admiral.

Mr. Kolisch: No objection.

The Court: It may be admitted.

(Deposition of Evans T. Morton.)

(Group of photostatic copies of advertisements of Admiral Corporation, previously identified as Plaintiff's Exhibit 3-LL for Identification, were received in evidence.)

Mr. Cuningham: Continuing with the question:

“\* \* \* which unfortunately did not come with a date.

Mr. Byron, that is true of several of these. They missed a little slip at the bottom in the photostatic copy they made, but I trust we can cure that later.”

The Court: What difference does that make?

Mr. Cuningham: It explains the condition of the exhibits, your Honor. They have not been corrected.

“\* \* \* at the bottom in the photostatic copy they made, but I trust we can cure that later.

It has as a headline: ‘We betcha you never saw such “rave notes”——’

Mr. Byron: “Lead line.” [1033]

Mr. Cuningham: I beg your pardon, “lead line: ‘We betcha you never saw such “rave notes”——

When a really new invention as utterly different from all other refrigerators as Dual-Temp reaches the public, you naturally wonder: “How’s it doing \* \* \* in actual use?” ”

What really great invention did Admiral Corporation have in mind?

Was that one of the really great inventions you considered with outside counsel?

(Deposition of Evans T. Morton.)

A. We were granted a patent on both the refrigeration system and the refrigerator cabinet construction for this refrigerant.

Q. Are any of the inventions covered in the patent in that volume of Admiral patents what you would call really great inventions, maybe with the exception of this patent you are licensed under?

A. A really great invention would eliminate probably 99 per cent of the patents. I am speaking of all patents generally.

Q. Including Admiral's?

A. I would say it is not considered a great invention in line with the electric light bulb or the telephone.

Q. Or Armstrongs frequency modulation?

A. It is not that nature of invention.

Q. Then this must have been one of the one per cent. What [1034] one per cent in the refrigeration business can you imagine was meant by this really great invention?

Wasn't it a fact, Mr. Witness, that the Potter two-temperature refrigerating system spurred the interest of Stewart-Warner in this two-temperature refrigerator field? Don't you know that is a fact?"

Mr. Byron: I object to that, your Honor. It has no bearing here, but let him go on.

The Court: Very well.

"A. I can answer the question on the basis that at no time do I recall anyone at Stewart-Warner

(Deposition of Evans T. Morton.)

bringing up any other two-temperature refrigerator in development.

Mr. Cuningham: That is all."

The Court: That closes the deposition.

Ladies and Gentlemen, we did not take our recess at the end of one hour, but I thought we ought to finish this deposition. We will take a short recess.

(Thereupon, the jury retired for the morning recess.)

The Court: What other depositions do you propose to read?

Mr. Cuningham: Sir, I am going to skip through this [1035] thicker volume of Admiral depositions.

The Court: I thought it was agreed that anything that was not pertinent would be deleted in this Morton deposition and these other ones. I see a lot of information concerning former employees of Stewart-Warner that has absolutely no relevance to this case.

Mr. Cuningham: I think it does have, sir.

The Court: Well, you just wait until I instruct the jury and tell them what I think about this Stewart-Warner. I am going to tell them very specifically that Stewart-Warner has nothing to do with this case and that they are to disregard totally any evidence in that regard. We will take a ten-minute recess.

(Thereupon Court and counsel took the morning recess.)



The Court: What deposition do you propose to examine now?

Mr. Cuninghame: Your Honor, Mr. Byron and I have been checking them. We are skipping through these thick ones and then starting with the first one which is Siragusa.

The Court: Do you propose to read any other portions, or have you read——

Mr. Byron: Yes, your Honor.

The Court: On Siragusa?

Mr. Cuninghame: I will go slow, sir, and announce where [1036] we are skipping.

The Court: Very well.

Mr. Byron: I will start to read on Page 8 of the Siragusa deposition.

Mr. Cuninghame: I would start a little ahead of that, if I may.

Mr. Byron: Oh, excuse me.

The Court: Page 8 is the first page.

Mr. Cuninghame: The only thing I would like to call attention to, your Honor, is that on Page 2 they are noticed as discovery depositions of the adverse party.

The Court: Yes.

Mr. Cuninghame: I was going to start on Page 8.

Mr. Byron: All right.

(Thereupon, the deposition of Ross D. Siragusa was read into the record as follows: With Mr. Cuninghame reading the questions and the Court Crier reading the answers.)

DEPOSITION OF ROSS D. SIRAGUSA

“Q. Please state your name, residence and occupation.

A. Ross D. Siragusa, Admiral Corporation, 3800 Cortland Street, Chicago 47, President.

Q. And your residence?

A. Barrington, Illinois.

Q. How long have you been president of Admiral Corporation?

A. Approximately twenty years. [1037]

Q. How long has Admiral Corporation been in existence? A. Approximately twenty years.

Q. Have you been its president throughout its existence?

A. I think so. We might have had a two or three-month period when perhaps a lawyer was president. I don't recall. But for your information, we will mark the record since the inception.

Q. That is entirely satisfactory. What were your connections prior to your becoming president of Admiral?

A. I was president of Transformer Corporation of America. Is that relevant?

Q. It is preliminary.

A. I dispute that. I disagree. Let us start with Admiral Corporation, if you don't mind.

Q. You refuse to answer?

A. No, look, Mr. Cuninghame, it isn't a question of refusing to answer. I don't think that is a fair question.

Q. Prior to becoming president of Admiral?

(Deposition of Ross D. Siragusa.)

A. That is right.

Q. And what prior to that?      A. School.

Q. What was the business of Transformer Corporation?      A. Manufacturing transformers.

Q. How long were you in that association?

A. Oh, approximately eight years.

Q. And then for the last past twenty approximately you [1038] have been president of Admiral, is that correct?      A. That is right.

Q. What is the business of Admiral Corporation?

A. Manufacturing and distributing electronic apparatus, refrigerators, ranges, freezers, air conditioners, electric ranges.

Q. That is as of the present time?

A. Well, I believe that was the question you asked.

Q. Yes. I just want to make sure we are talking about the right thing.

Now, what was the business of Admiral Corporation twenty years ago when you became its president?      A. Manufacturing radio sets.

Q. Only?      A. Only.

Q. Can you tell us briefly for the record the history of the product development of Admiral Corporation?

A. It is in a little book and that is available to you.

Q. I would be very glad to have it. May I have a copy?

(Deposition of Ross D. Siragusa.)

A. Yes. That gives you the thumbnail sketch of the last twenty years."

Mr. Cuningham: If your Honor please, a copy was produced and identified in this case as Plaintiff's Exhibit 3-Z. I offer it in evidence, a little pamphlet. [1039]

Mr. Byron: I object to it because it is not material here at all, but what difference does it make what the history of Admiral is?

The Court: What do you claim for it?

Mr. Cuningham: Well, your Honor, it shows in thumbnail form the history of the Admiral Corporation, including how they got into the refrigeration business, and contains, for example—

The Court: Let me see the book. We have a lot of exhibits here. Go ahead. I will take this under advisement.

"Q. Well, it is common knowledge, I guess, the Admiral Corporation was primarily engaged in the electronic business and particularly in radio and later in the television business?

A. Well, before television, chronologically, I believe, before television we manufactured refrigerators, I believe, and electric ranges.

Q. When did you begin the manufacture of refrigerators?

A. That is a matter of record. I can't give you the exact period.

Q. Well, give me it as exactly as you can by the year.

(Deposition of Ross D. Siragusa.)

A. I can't give it to you even to the year because of the war. I believe it would be around 1945 or 1946. I am guessing.

Q. So it was after World War II?

A. I would say so. [1040]

Q. Then, if I understood you correctly——

A. Television followed that.

Q. Television followed the refrigeration?

A. Yes.

Q. Had you had any contact with the refrigeration business before?      A. No.

Q. Or the Admiral Corporation?      A. No.

Q. Well, now, you personally had had contact prior to your joining Admiral in the radio business, had you not, or had experience in the radio business?

A. Transformer Corporation of America made transformers and a few radios.

Q. Has the name of Admiral Corporation always been Admiral Corporation?

A. No. It was originally started as the Continental Radio & Television Company back twenty years ago. It changed its name about in—the book will give you that, this little historical background.

Q. Well, I would like your recollection now, if I may.

A. About 1939 or 1940, to the best of my ability. I can't recall the exact year the name was changed to Admiral Corporation.

Q. Can you recall any connection with the Sonora Company? [1041]



(Deposition of Ross D. Siragusa.)

A. We made some radio sets before the war under the Sonora brand. The Sonora Company, I just don't recall whether it was a corporation or whether we just made a brand name set for an individual.

Q. But you personally had no connection with the company by the name of Sonora?

A. No, I personally didn't."

Mr. Cuningham: Now, if your Honor please, I would like to skip to 116, bottom of the page.

The Court: To 116?

Mr. Cuningham: I beg your pardon, to 16, bottom of the page.

"Q. Have you any recollection of who——"

The Court: One second; do you want to read any more (to Mr. Byron)?

Mr. Byron: Not at that point.

Mr. Cuningham: We had cleared, I think, pretty much through this Siragusa deposition.

The Court: Very well.

"Q. Have you any recollection of who is a top officer in Admiral besides yourself? [1042]

A. Yes.

Q. Who?                      A. John B. Huarisa."

Mr. Byron: Of course, your Honor, I want to make it clear that I think there is a lot of material in here that Mr. Cuningham may read that will have no materiality. It does not make any difference who was vice-president. He was asking those

(Deposition of Ross D. Siragusa.)

questions for discovery so he could go and find out something from those gentlemen, but that eventuated to nothing, and I do not know if it will serve any useful purpose to read those parts. I have no objection to it.

Mr. Cuninghame: I have tried to cut them down. I am skipping. There is a relationship with the identification of certain of these individuals that I think is material.

The Court: All right.

“Q. What is his position?

A. Executive Vice-President.

Q. How do you spell it?

A. Let us get the annual report. I think we can save time, Miss Court Reporter, and just include the annual report, and right on the front page is a list of all the officers and their respective [1043] titles.

Would you care to come back to that after you have had a chance to review the annual report?

Q. I think I can go ahead in the absence of that with some questions.

A. All right.

Q. By the way, what general divisions product-wise do you have in Admiral Corporation?

A. Well, we have the Electronics Division, which is radio, television and government; and we have the Appliance Division, which includes refrigerators, air conditioners, freezers, ranges, dehumidifiers; and we have several subsidiary companies that manufacture components for these two divisions.

(Deposition of Ross D. Siragusa.)

Q. Can you name some of the subsidiaries that manufacture for the Appliance Division?

A. Molded Products Corporation manufactures I believe some plastics for the Appliance Division. I don't recall any other subsidiary manufacturing for the Appliance Division.

Q. Who makes your cabinets for refrigerators?

A. That is made in the Appliance Division, and the Appliance Division is spelled out in the annual report. It is the Midwest Manufacturing Company. They manufacture the cabinets.

Q. I am afraid I don't understand. Is Midwest—

A. Midwest Manufacturing Company is the subsidiary that manufactures appliances. I described all of the appliances to you. [1044]

Q. And Midwest is a subsidiary?

A. Of Admiral Corporation.

Q. Of Admiral Corporation?

A. That is correct.

Q. Are they located here in Chicago?

A. No. They are in Galesburg, Illinois.

Q. Who heads the Midwest?

A. Mr. Lou Moos, Vice-President of Midwest.

Q. You mentioned Mr. Huarisa.

A. Huarisa, it is right here, sir (indicating).

Q. John B. Huarisa. Is he as Executive Vice-President a top officer over both the divisions?

A. Both. Over all divisions, correct."

Mr. Cuninghame: Now I skip to 21, and just for

(Deposition of Ross D. Siragusa.)

the offer, we got the annual report in 1954, and I offer that as Plaintiff's Exhibit 3-AA.

Mr. Byron: It is not material.

The Court: That as well as the booklet is rejected on the ground that they have no relevance in this case whatsoever. You may have an exception to the ruling of the Court.

(Documents previously marked Plaintiff's Exhibits 3-Z and 3-AA for Identification rejected.) [1045]

"Q. Now, who is Mr. Edmond I. Eger, also listed here as a vice-president?

A. He is vice-president of advertising.

Q. Where is his office? In this building?

A. In this building.

Q. How long has he been vice-president of advertising?      A. Approximately fifteen months.

Q. Who preceded him in that capacity?

A. Seymour Mintz, not as an officer."

Mr. Cuninghame: I will skip now to Page 24:

"Q. You don't sell any refrigerators to the Government?      A. No.

Q. Who is Mr. Wallace C. Johnson, also listed as a vice-president?

A. General sales manager.

Q. General sales manager?      A. Yes.

Q. That encompasses refrigerators as well as other products?      A. Yes, right.

Q. Where is Mr. Johnson's office? In this building?      A. In this building.

(Deposition of Ross D. Siragusa.)

Q. How long has he been associated with Admiral Corporation?

A. I don't recall. You will have to get it——

Q. Well, can you give me your best recollection, minimum or [1046] maximum number of years?

A. Ten or twelve years.

Q. That is for the past ten or twelve years?

A. Yes."

Mr. Cuningham: Then we jump to Page [1047] 32.

"Q. Mr. George E. Driscoll, secretary and assistant treasurer. A. Office of the building.

Q. What are his responsibilities?

A. Financial.

Q. How long has he held that position?

A. Well, as secretary, I would say three, four, five years. As assistant treasurer, since the first of the year, since approximately the first of the year.

Q. Does he have under him the accounting?

A. Yes."

Mr. Cuningham: I will skip to 41, bottom of the page.

"Q. Now, Mr. Siragusa—I can't read my own writing—is it Eger? A. Yes, sir.

Q. He is in charge of advertising. Does he have complete advertising records for the past fifteen months, or should he have?

A. You mean copies of advertisements?

Q. Yes. A. I am sure we have.



(Deposition of Ross D. Siragusa.)

Q. And I would like you to confine that to refrigeration advertising, household refrigeration.

A. It would be mountainous. You would have to wait quite a long time to get that information unless you requested [1048] specific ads. We could probably pick those up for you rather simply and easily.

You mean national advertising, magazines?

Q. Yes, magazines, yes.

A. You would be satisfied with those?

Q. I think so, yes.

A. Those are very easily, readily available.

Q. I would further like to narrow the request to the Dual-Temp advertising.

A. Dual-Temp, that is very easily done."

Mr. Cuninghame: I will skip the colloquy there.

"Q. Now, do you have a research and development laboratory in Admiral?      A. Yes, we do.

Q. Who is in charge of that?

A. Well, we have three divisions. The Electronics Division is headed up by Mr. Rinaldo De Cola.

Q. His name is Rinaldo De Cola? That is one man, is it?

A. One man. We have another laboratory in charge of Mr. Evans Morton at the Midwest Manufacturing Company. That has to do with appliances, which I stated some time before.

We have a West Coast laboratory which is devoted to electronics exclusively, and that is under Mr. Robert Jones.

(Deposition of Ross D. Siragusa.)

Q. So that, as I understand it, and correct me if I am [1049] wrong, the only research laboratory is that headed up by Mr. Evans Morton which concerns itself in any way with refrigeration, is that correct? The others are electronics?

A. That is right.

Q. And as I understand it, his laboratory is over all on appliances? A. That is right.

Q. And appliances includes the items you have named before? A. Yes.

Q. Can you give me some rough idea of the relative importance of refrigeration in this research laboratory as compared to the other appliances?

A. Well, I believe the bulk of the engineering, and it is a rather extensive lab, is devoted to research and development of refrigerator products.

Q. You would say that was the bulk of the work? A. Yes.

Q. Are you speaking as of now?

A. As of a long time back.

Q. How long a time?

A. Since we went out into the refrigerator business.

Q. Ten years?

A. Since we started the refrigerator business.

Q. That is approximately ten years ago, as I understand it? A. I believe so. [1050]

Q. Would you say that was most of the work of this large laboratory, research laboratory?

A. Yes.

(Deposition of Ross D. Siragusa.)

Q. Can you give me some idea of the personnel employed in that Midwest research laboratory?

A. I can't tell you the number of people employed in that division.

Q. Either the maximum or minimum?

A. I couldn't do that. I just don't know.

Q. More than ten?

A. Oh, yes, far more than that.

Q. More than fifty?

A. Well, it might be in the neighborhood of fifty or more.

Q. Are they all located in one place?

A. Yes.

Q. What is the address?

A. Galesburg, Illinois.

Q. Do you know the street address, or do we need it?      A. No. It is a small town.

Q. Had Mr. Evans Morton, if you know it, had any experience in refrigeration engineering?

A. Yes. He came from Stewart-Warner.

Q. So that he has been with Admiral about ten years, is that correct?

A. Yes, all of that, I would say. [1051]

Q. How long had he been with Stewart-Warner, do you know?      A. I can't answer that.

Q. Do you know what his capacity was while he was at Stewart-Warner?

A. Well, he was either chief engineer or assistant to the chief. I don't know which.

Q. Do you know how long he had been associated with Stewart-Warner?

(Deposition of Ross D. Siragusa.)

A. I said I didn't know.

Q. Was he the only research engineer that"—

Mr. Byron: I think I should enter an objection in view of the rulings heretofore given by the Court.

The Court: Mr. Morton has already testified. He has given you all this information. It appears you're interrogating a man who doesn't know these questions.

Mr. Cuninghame: But here, your Honor, I am interrogating the President of the Admiral Corporation and who is stating much better than the witness himself can what he thinks of the particular witness, is putting him in his proper perspective for the Court and jury. It isn't the same as if you asked the witness himself what his qualifications were. I think we are entitled to this type of setting. That's the purpose of the exhibit.

The Court: Do you want to show he is incompetent or [1052] competent?

Mr. Cuninghame: It shows that he is very competent and that he has a lot of information.

The Court: All right. Go ahead.

Mr. Cuninghame: "Q. Was he the only research engineer that came from Stewart-Warner to Admiral at the time of the transfer?

A. I believe, I am not sure, but I believe that several other men came to us from Stewart-Warner when we bought that division. But that information is readily available."

Mr. Cuninghame: And then I jump to 51.

(Deposition of Ross D. Siragusa.)

“Q. Max J. Schinke?

A. Yes, he works for us as service manager of Admiral Corporation, all divisions, general service manager.

Q. Did he come over at the time of the transfer in 1945 or 1946, whatever it was?

A. That is right.”

Mr. Cuningham: Skip to 52.

“Q. How about Mr. Glenn Muffly?

A. I don't know—yes, I do. I met Mr. Muffly many years ago. He has never been with us.

Q. Has he ever been retained by you as an expert in refrigeration? [1053]

A. He might have been, and I think that is perhaps where I met him. I believe you are right.

Q. Is he currently so retained?

A. I don't know. Is he?”

Mr. Cuningham: Then to 55.

“Q. Now, Mr. Siragusa, you have referred to this”—I may want to strike this. Just a minute—or omit it, I mean. I think I shall omit it and go to 59.

Your Honor, I had planned to read from the middle of page 59 to the colloquy at the end of 65. I am wondering, in view of your Honor's ruling, whether I should do so. As far as I can see it's all relevant and I don't want to appear to violate any ruling.

Mr. Byron: Of course, my thought is it's not relevant.



(Deposition of Ross D. Siragusa.)

Mr. Cuningham: Well, certainly—how far did I say?

Mr. Byron: 59 to 65.

Mr. Cuningham: I think certainly on 63 it is relevant.

The Court: On 63 it is what?

Mr. Cuningham: Relevant, it seems to me, sir. In fact, I have no question about that. I would be glad to proceed unless you think I should not. Middle of 63.

The Court: You mean you are going to start at the middle of 63?

Mr. Cuningham: No. I would like to start, if your Honor [1054] has no objection—

The Court: Well, Mr. Cuningham, throughout the day you have been trying to tie in Stewart-Warner with this case in spite of my repeated admonition that Stewart-Warner has no connection with this case.

Mr. Cuningham: Well, your Honor—

The Court: You have listed time and again members of the—in the deposition of officers who came from Stewart-Warner, and then when I ask you the relevancy you wanted to note a characterization, and then when the statement came in that this was the time of transfer you dropped the examination.

Mr. Cuningham, I think that you ought to stop doing that and abide by the rulings of the Court.

Mr. Cuningham: Well, your Honor—

The Court: Ladies and gentlemen of the jury,

(Deposition of Ross D. Siragusa.)

I am going to tell you right now that Stewart-Warner has nothing to do with this case. The Admiral people bought some assets from Stewart-Warner and they are not bound by anything that Stewart-Warner did. If you buy a store unless you specifically agree to be bound by the engagements of the former owner, you are not bound by it. And by the same token Admiral is not bound merely because it bought some of the assets, including some of the patents.

Now, I instruct you that as a matter of law.

Mr. Cuningham: I am—— [1055]

The Court: The motion is—you may have an exception to my remark and you are not to read the portions you suggested.

Mr. Cuningham: That's beginning on 59 and going over, your Honor—I am merely reminding you of this, the statement by Mr. Cuningham on page 63.

The Court: Well, pass this one for the time being and we will come back to it. I want to read it more carefully.

Mr. Cuningham: I will jump, then, your Honor, to page 89, and I would like to look at it before we start reading it.

Well, your Honor, I must admit your ruling is tough. Of course, these depositions were taken before. There is a reference there. My plan was to read from 89 to 91, through 91 and over to the top of 92.

(Deposition of Ross D. Siragusa.)

The Court: Well, I think it's clearly inadmissible.

Mr. Cuningham: We will not read it. Then I intended to go to 95, and again I don't know without looking at it—I guess that's all right, sir.

Mr. Byron: Well, I have the sequence as 95, beginning about six lines down, "Can you tell me which type of refrigerator has shown you in the past your highest and best profit, and by type I mean of the two general types, the conventional or dry cold as distinguished from the Dual-Temp, as between those two categories of boxes?" Then the answer. [1056]

Mr. Cuningham: I think that was a question by me.

Mr. Byron: "A. Mr. Cuningham, is that relevant? I can answer it.

Q. I think it is quite relevant.

The Witness: Is it relevant, Mr. Byron?"

Mr. Byron: Well, do you want that colloquy?

Mr. Cuningham: Yes, I think we ought to have it.

Mr. Byron: "Well, it is one of those borderline questions. I will put in an objection that it is not relevant.

Mr. Baltz: It may be that you don't want to answer it.

Mr. Cuningham: I don't want the figures. I just want which is the best profit opportunity.

The Witness: If counsel says to answer it, I will be glad to answer that question.

(Deposition of Ross D. Siragusa.)

Mr. Byron: Yes, answer it.

A. Conventional boxes. May I tell you why?

Q. (By Mr. Cunningham): I was just about to ask you why?

A. Many times the number of units.

Q. That are sold? A. Oh, many times.

Q. Is the profit ratio per unit greater on the conventional or on the Dual-Temp?

A. On a weighted average basis, it would be higher on the conventional.

Q. I am afraid I don't understand what you mean by weighted [1057] average basis.

A. Yes, weighted average means if we have nine conventional boxes in a line, seven and eight and nine or ten or eleven, of various types, such as stripped, standard, de luxe, you weigh the average for the year, you take a profit factor, and that is a weighted percentage, and that is higher than the Dual-Temp or two-temperature. We call that the Dual-Temp or two-temperature. I tried to qualify the meaning of the word Dual-Temp in that answer.

Q. Which type, conventional or Dual-Temp, was sold in greatest dollar volume by Admiral over the past ten years? A. The conventional.

Q. In dollar volume? A. Sure.

Q. With respect to your plugging or promoting of these two types, on which do you spend the most money in advertising? A. The two-temp.

Q. You have consistently sold both types right along, have you not?

(Deposition of Ross D. Siragusa.)

A. Yes, but by far the conventional, by far in number of units or dollars, the conventional, by far.

Q. And as I understood your testimony, in profit per unit?

A. By far, weighted average and total dollars, conventional.

Q. How about without the weighted average? How about just the profit per unit, is that more or less? [1058]

A. In dollars?

Q. Yes, in dollars.

A. Well, you see, you will have to make the question more specific. We make a seven, an eight, a nine, a ten and eleven foot standard refrigerator. Well, we make them up to twelve cubic feet in size. Which one are you referring to, the Dual-Temp box and what, a seven foot? Obviously, the Dual-Temp would have a higher profit factor. But if you get into an eleven foot deluxe conventional, we have more profit in an eleven foot deluxe than we would in a Dual-Temp. Our margin of profit is very small in the Dual-Temp.

I know it creates a frown on your face, if I make that statement.

Mr. Cunningham: I am sorry if I frowned.

The Witness: No, but it is true.

Q. (By Mr. Cunningham): Can you give me any idea in dollars and cents how great the difference is?

A. No, I can't. That would have to be studied



(Deposition of Ross D. Siragusa.)

and after—strike this from the record. This is off the record.

Mr. Cuninghame: All right.

(Whereupon, a discussion was had off the record, after which the following proceedings were had herein:)

The Witness: I will not disclose that information. You will have to get a court order for our profit structure on [1059] our various products, not only on appliances, but radio and television also. I will not disclose that information. I have tried to give you to the best of my ability a rough idea of what the profit structure would be on both types of the units.

Q. (By Mr. Cuninghame): Mr. Siragusa, I have before me a 1950 copy of Air conditioning-Refrigeration News, dated July 1, 1950, the second page of which lists the usual information as to the products of Admiral. Apparently in that year you sold only two Dual-Temp models, namely, model Nos. 1090 and 1390. At least that is all that is reported here. Is that correct?

A. I remember those model numbers. Those would be described as ten and thirteen feet respectively.

Q. They are so described here. The 1390 is 13.5 cubic feet?      A. That is right.

Q. And the 1090 is 10.6. Now, there seems to be nothing that precisely corresponds among the other eight models, which are all of the conventional

(Deposition of Ross D. Siragusa.)

type. Is that a representative list of your refrigerators sold at that time?

A. For four or five years, I would say, we had an average of two Dual-Temps in the line and possibly as many as twelve, thirteen, fourteen conventionals. The past several years, perhaps two or three years, we have had an average of one to one and a half Dual-Temps in the line and fourteen, fifteen, [1060] sixteen conventionals. That is why the preponderance of sales and profits is in the conventional and not in the Dual-Temp.

Q. Well, tell me if you think you are not qualified to answer this. I want to be very fair about it.

But how does that stack up with the experience of other refrigerator manufacturers, such as Frigidaire, General Electric? They don't use your trade name.

A. As far as two-temperature boxes are concerned?

Q. Yes, moist-cold boxes.

A. Well, I really can't answer that. I don't know what my competitors do.

Q. Do you attempt to keep abreast of your competitors?

A. I do, insofar as specifications and prices and styling are concerned, but not a breakdown of models. I obviously couldn't get that.

Q. But do you attempt to keep abreast of the two general types of refrigeration, that is, the conventional and the moist-cold, I shall call it, to avoid using your trade-mark 'Dual-Temp'?

(Deposition of Ross D. Siragusa.)

A. Yes, we try to keep abreast of our competition, Mr. Cuningham.

Q. There are those two general types, are there not, in the refrigeration industry?

A. Yes. They are called either moist-cold or two-temperature or freezer chest and moist-cold combination, yes. [1061]

Q. As distinguished from conventional?

A. From conventional.

Q. Which is the dry.

A. And they in turn are distinguished—there are several in that category, the U-shaped evaporator box, the wide evaporator, and so forth.

Q. But there are those two broad categories of household refrigerators, are there not, say the dry cold versus moist cold?

A. Yes, I would say so.

Q. And those are generally accepted terms in the industry?      A. Right.

Q. Has that been true ever since your knowledge and activity here at Admiral for the last ten years in the refrigeration business?

A. I believe that that has. I believe Frigidaire has had a moist-cold refrigerator for about as many as we have. I think they have. I don't know about the others."

Mr. Cuningham: I would like to skip to 109 and read it, your Honor. I plan——

The Court: I think this is a good time for a recess and then you can go through the balance of

(Deposition of Ross D. Siragusa.)

your interrogation and delete the offensive portions.

Ladies and gentlemen, we will take a recess [1062]  
until 1:45.

(Whereupon, at 12:05 o'clock p.m., a recess  
was taken until 1:45 o'clock p.m.) [1063]

### Afternoon Session

(At 1:45 o'clock p.m. the trial herein was resumed, pursuant to recess, and further proceedings herein were had as follows.)

The Court: Which deposition were we reading?

Mr. Cuninghame: If your Honor please, I think I have a better idea of the scope of your Honor's ruling, so we have cut down this materially. The next spot that I wish to start with in Siragusa is the latter part of Page 112. Mr. Byron may have something before that.

Mr. Byron: I have just a question and answer on Page 111.

The Court: Very well.

Mr. Byron: Mr. Cuninghame asked the question. Perhaps you would like to ask it.

Mr. Cuninghame: Do you want me to ask it?

Mr. Byron: You can.

"Mr. Cuninghame: Q. Have you discussed the so-called Potter patent reissue in suit with any other refrigeration manufacturer?

A. I have not."

Mr. Cuninghame: Then at the bottom of Page 112:

(Deposition of Ross D. Siragusa.)

“Q. Have you had any experience in reading and interpreting [1064] patents?

A. No use in showing it to me because I couldn't read a diagram from an architectural drawing.

Q. Who would be best qualified in the Admiral organization to give us such assistance?

A. I would imagine Mr. Morton would.”

Mr. Cuninghame: Then, if your Honor please, I would like to go to Page 134.

Mr. Byron: I would like to go to 132; cross-examination.

The Court: 132?

Mr. Byron: Correct.

The Court: All right; go ahead.

Mr. Byron: Cross-examination.

#### Cross-Examination

“Q. Mr. Siragusa, I would like to clear up one point with respect to patents owned or controlled by others than the Admiral Corporation. Do you respect patents owned or controlled by others than Admiral Corporation? A. Most certainly.

Q. And if you thought that you infringed any patent, you would either attempt to purchase it or secure a license under it? A. Yes, sir. [1065]

Q. State your general policy with respect to patents, and the policy that Admiral Corporation has with respect to them.

A. As I testified before, we have RCA, licensor, Hazeltine, and we may have some others in the appli-



(Deposition of Ross D. Siragusa.)

ance field, and in the electronics field as well.

If we feel that we are violating a patent or on the verge of it, we will attempt to take out a license. Failing in that, of course, we drop it or achieve a particular electronic objective—I speak of electronics, I mean I talk more about electronics because I am closer to that field—and we may design around it. But we first try to take out a license under the particular patent.”

Mr. Byron: That is all.

Mr. Cuninghame: On redirect examination:

#### Redirect Examination

“Q. What licenses do you have in the refrigeration field?

A. I don't recall, Mr. Cuninghame, but that I think our counsel or Mr. Baltz can give you. You might have to give him a day or two and then pick it up. They will get the information from Midwest, our subsidiary.

Q. You mentioned as examples of your respect for adversely held patents the Radio Corporation of America and Hazeltine Corporation. Is it not a fact that you brought a declaratory [1066] judgment suit against the Radio Corporation of America to declare invalid each of its 10,000 patents in the District of Delaware a few years ago?”

Mr. Byron: I think that is quite immaterial. I have no objection to it seriously.

(Deposition of Ross D. Siragusa.)

Mr. Cuningham: If your Honor please, it was opened on cross.

The Court: Well, isn't that the place a person should go to find out what his rights are, in court?

Mr. Cuningham: Well, I did not have in mind the particular court; the fact that he brought the suit against the 10,000 patents.

The Court: All right; you may answer.

“A. I believe we did. I believe we did.

Q. And I believe you backed down and settled the case, did you not? A. Yes.

Q. You set up some antitrust defenses, as I recall it? A. Yes, I think so.

Q. Is that an example of your respect and co-operation on other——”

The Court: Do not answer that question. [1067]

“Q. Did you respect the Armstrong patents in the electronic field? A. No——”

Mr. Byron: I think that is immaterial.

The Court: The jury is instructed to disregard all the testimony concerning the declaratory judgment suit. We are not trying any other case except the one involved here.

Mr. Cuningham: If your Honor please, I suppose that ruling extends to the next question and answer, but the one after that I should like to read.

The Court: What question is it?

Mr. Cuningham: Page 136; one, two, three from the top, third question.

(Deposition of Ross D. Siragusa.)

The Court: "What reserves——" Is that it?

Mr. Cuningham: That is correct.

The Court: Objection sustained. You cannot read that.

Mr. Cuningham: And the same applies to the answer to that?

The Court: That is right. It has no relevancy whatsoever.

Mr. Cuningham: If your Honor please, I will skip for the time being, without waiving my right to read this at another time in the case, the Bailey and the Rengel [1068] depositions.

The Court: Siragusa has been closed?

Mr. Cuningham: Yes. I would like to go to——

The Court: I do not understand. What is Bailey and Rengel?

Mr. Cuningham: I am omitting those for the moment. I do not expect to read them in our case in chief.

Mr. Byron: It seems to me that if they are going to be read at all they should be read now.

The Court: Before he closes his case, however; if you close your case you cannot read any more depositions unless it is for the purpose of rebuttal.

Mr. Cuningham: I should like to go to the deposition of Mr. Driscoll beginning on Page 202:

## DEPOSITION OF GEORGE E. DRISCOLL

“Q. Give your name and address and years of employment with Admiral.

A. My name is George E. Driscoll, 6920 North Medford, Chicago. I have been employed here since 1936.

Q. Title?

A. I am the secretary and assistant treasurer.

Q. Can you tell us what the practice of the Admiral Corporation is with respect to——”

Mr. Cuninghame: I beg your pardon; that is not what I [1069] wanted it for, sir. I did not spot that. I want to skip now, after identifying him, to Page 204.

“Q. Now, in the year 1950, Admiral manufactured about ten different types of refrigerators, is that right?

A. No, we didn't make any refrigerators in 1950.

Q. 1950? A. No, sir.

Q. Well, your subsidiary, Midwest, made ten different types and Admiral sold them, is that right?

A. No, they wouldn't have made ten even in 1950; no.

Q. Well, give us the facts such as they are.

A. In 1950 refrigerators were made by Seeger Manufacturing Company in St. Paul, Minnesota, and the American Central Division of the Abco Corporation in Connersville, Indiana, and perhaps late, very later in the year 1950—I would have to check

(Deposition of George E. Driscoll.)

this—Midwest, a subsidiary of Admiral, began manufacturing refrigerators.

Q. So until late 1950 all of Admiral's production came from outside, of refrigerators?

A. Yes. I am a little hazy whether it is 1950 or 1951 when we bought Midwest. We bought it on March 31st, but I don't recall whether it is 1950 or 1951."

Mr. Byron: I do not see, your Honor, any materiality. [1070] The fact is, who made them for Admiral, Admiral sold them anyhow. We were not in a position to manufacture them at that time. We had them manufacture them, and we sold them.

Mr. Cunningham: Your Honor, I hesitate to characterize it as an important defense, but when the Admiral Company got into the business is material in this case, as I think your Honor well knows, of the special defenses set up by the defendants, and, by the way, I would like to show you some exhibits we have on that.

The Court: I am going to let it in. Go ahead.

"Q. Was Midwest one of your suppliers at that time? A. No, sir.

Q. Did the Seeger and Abco companies build the refrigerators that were marketed by Admiral pursuant to Admiral specifications, drawings and requirements? A. That is correct.

Q. And did Admiral have personnel who engineered and supervised the construction of refrigerators sold under the Admiral name?



(Deposition of George E. Driscoll.)

A. That is correct."

Mr. Cuningham: Unless Mr. Byron has something, I think that is all of the Driscoll deposition.

Mr. Byron: I think not. [1071]

Mr. Cuningham: Then I would like to read the deposition of Mr. Johnson, except for colloquy, in its entirety, beginning on Page 214 and with other exceptions, if I notice them, to come under your Honor's ruling.

The Court: Very well.

(Thereupon the deposition of Wallace C. Johnson, a witness called in behalf of Plaintiff, was read into the record, with Mr. Cuningham reading the questions and the Court Crier reading the answers as follows:)

## DEPOSITION OF WALLACE C. JOHNSON

"Q. Mr. Johnson, state your name.

A. Wallace C. Johnson.

Q. Where do you reside?

A. 6752 North LaPorte, Lincolnwood.

Q. What is your occupation?

A. Vice-president in charge of sales.

Q. How long have you held that position?

A. As vice-president?

Q. Yes.                      A. About seven years.

Q. I have been reading this little sketch of the company which gives me some information about you. I got the impression from it that you arrived in the early 1940's, is that right?

(Deposition of Wallace C. Johnson.)

A. That is right.

Q. In what capacity did you first join Admiral?

A. As regional manager.

Q. In what year?

A. That was in September of 1944.

Q. What were your responsibilities at that time when you joined?

A. I covered some twenty states.

Q. In all products? A. In all products.

Q. That did not, then, of course, include refrigeration, did it? A. About ten years.

Q. 1930 to 1940? A. Yes.

Q. Handling their radios and electronic products? A. Yes. I was a regional man.

Q. Not refrigerators? A. No appliances.

Q. This booklet says, and it is correct, is it not, that you are now vice-president in advertising, it says? A. No.

Q. I am incorrect. That is Mr. Seymour Mintz, and he is no longer with the company?

A. That is right. [1073]

Q. Are you familiar with this little booklet which is marked Siragusa Exhibit 1? A. Yes."

Mr. Byron: That has been excluded.

Mr. Cuninghame: Your Honor has excluded that.

The Court: Yes. Go to the top of Page 222: "Were you familiar in 1939——"

Mr. Cuninghame: Are you excluding Page 219, sir, at the bottom?

The Court: Yes.

(Deposition of Wallace C. Johnson.)

Mr. Cuningham: Going, then, through 220, 222?

The Court: I thought you were on 221.

Mr. Cuningham: If your Honor wants me to read it, I will. I did not plan to read it.

The Court: Which one?

Mr. Cuningham: 222.

The Court: I do not care what you read except that there are some things you are not going to read. Where do you want to go?

Mr. Cuningham: Let me get the place here.

The Court: I thought that when the booklet was mentioned you were on 221.

Mr. Cuningham: I was on 217.

The Court: 217? I do not care about that. You can [1074] read anything you want on Pages 217, 218, 219 and 220.

Mr. Cuningham: Perhaps we can skip some of it. The bottom of Page 219:

“Q. I think it is correct to say, is it not, that you were the top executive in 1944 with refrigeration experience?

A. No, I couldn't say that.”

Mr. Cuningham: Strike it.

Now I understood your Honor does not want me to read on 222 and 223.

The Court: Well, you can read: “Were you familiar in 1939 to 1940——”

Mr. Cuningham: What page, sir?

The Court: 222.

Mr. Cuningham: “Q. Were you familiar in

(Deposition of Wallace C. Johnson.)

1944 or earlier with the Stewart-Warner Dual-Temp?           A. No.

Q. Were you familiar in 1939 to 1940, when you were selling the Gibson refrigerator, with the other competitive refrigerators on the market?

A. No, I was not, because I was not directly responsible for the refrigerator end of the business. I was concerned with RCA and its many products.

Q. Well, did you just happen to know of any combination [1075] freezer on the market in 1939?

A. No, I did not know of combination freezers of Stewart-Warner at that time. [1076]

Q. Or of any other manufacturer?

A. Or of any other manufacturer, not in 1939.

Q. When did you first know of a combination freezer-refrigerator?

A. When I came with Admiral, as the line developed."

Mr. Cuningham: I will skip the next sentence. Well, this is all a quotation from that booklet. We will skip that.

The Court: All right.

Mr. Cuningham: I would like to start in at the top of page 224, second question.

The Court: All right.

Mr. Cuningham: Maybe I had better start at the first question.

The Court: Go ahead.

Mr. Cuningham: "Q. Well, in any event, as far as your experience goes, was the Dual-Temp of Stewart-Warner the first such combination?

(Deposition of Wallace C. Johnson.)

A. The first that I knew about.

Q. Was it the first to feature moist-cold or humidity control in the fresh food compartment?

A. I wouldn't know that.

Q. You don't know of any earlier one, do you?

A. No. I just recall that Frigidaire had something like [1077] that, a cold wall. But that is all I do recall.

Q. You think they were earlier?

A. I don't really know."

Mr. Cuningham: Well, if your Honor please, I see no objection, even if it is a quotation, to starting in the middle of page 225.

The Court: Neither do I except I don't see the relevancy. But I am going to let you go ahead.

Mr. Cuningham: "Q. Now, continuing with this booklet, and I quote from page 12:

'The next step was to build up the Admiral trade name and at the same time develop a strong sales organization. This burden fell largely upon the shoulders of W. C. Johnson and Seymour Mintz.'

Can you tell us briefly, and limit your answer with respect to the refrigeration, what your main pitch was in selling refrigerators when you began to sell them after the war? What was your general sales argument that you and your organization used?

I will limit it to the Dual-Temp.

A. What our pitch was at that time with regard to Dual-Temp was that foods don't dry out and that foods don't transfer odors.



(Deposition of Wallace C. Johnson.)

Q. And that was because of the moist-cold compartment? [1078]

A. Well, that was because of two things, moist-cold compartment, and also the sterilamp. The sterilamp had to do directly with the transfer of odors.

Q. It had nothing to do with the humidity?

A. It had nothing to do with the humidity, but you would have transfer of odors if you didn't have the sterilamp, regardless of the humidity.

Q. Mr. Johnson, did you continue to use that same pitch throughout with respect to the Dual-Temp?      A. Pretty near, yes."

The Court: Don't you want to read on 227, -8, or -9?

Mr. Cuninghame: It does rather summarize the ads but I didn't want to——

The Court: Go ahead. You select the portions.

Mr. Cuninghame: Well, I would be glad to read it.

The Court: I don't care if you read it or not.

Mr. Byron: It doesn't seem to me to make much difference. If you are in business to sell things you have got to advertise. That's about all there is to that.

Mr. Cuninghame: Well, I think it might be some help to the jury and isn't long. I guess we will continue on 226 at the bottom.

"Q. As indicated, I think, by certain ads that I won't bother you about, that have been furnished me, unless you want to [1079] see them.

(Deposition of Wallace C. Johnson.)

A. No. That is about right.

Q. The ads I refer to are those attached to the Admiral interrogatories.

Now, what other sales helps, beside newspaper and magazine advertising, did you use to work up this refrigeration business?

A. We had sales meetings. We held dealer meetings across the nation. We used radio at that time to start with, and then as we progressed we went into TV.

Q. Did you get out any printed booklets such as these, exemplified by these that I show you, and I hand you Admiral interrogatory exhibits B through F, I believe."

Mr. Cuningham: Those have been previously identified.

The Crier: "A. Yes, these are service manuals.

Q. Those were sent to the distributors?

A. Sent to the distributor's service department and they in turn more than likely mailed some to the servicing companies that were handling the Dual-Temp.

Q. What was your system of distribution? Through jobbers and dealers?

A. Yes, the first step being through distributors, and they in turn sold to dealers.

Q. This little booklet characterizes the present-day organization—and by the way, I found a date in here of June 30, [1080] 1953, on page 1, so that it was probably printed since that time—characterizes

(Deposition of Wallace C. Johnson.)

the present organization as having 88 distributors and 32,000 retail dealers. Is that about the status at the present time?           A. What was that 88?

Q. 88 distributors.

A. That is about right, 86. I think that is a little high on the dealers.

Q. Well, that is a nationwide organization?

A. That is a nationwide organization. That includes people that have bought one refrigerator or one TV or one radio.

Q. Probably a little too much, to be conservative, is that it?           A. Yes.

Q. Did you furnish these distributors and dealers with any other printed sales helps than these service manuals?

A. I imagine so. I couldn't tell you exactly.

Q. I don't want to be too——

A. No, I imagine we had other material.

Q. Can you give me some generally used other item that you think of now?

A. There were specification sheets, your line folders.

Q. Well, I show you a 1956 publication marked Siragusa Exhibit 7."

Mr. Byron: Now, your Honor, that's far beyond the [1081] day when this patent expired, 1953, so it's immaterial.

Mr. Cuninghame: I withdraw it.

Jumping to page 232, middle of the page:

"Q. But did you have frosting in the moist-cold job?

(Deposition of Wallace C. Johnson.)

A. No, we did not have frosting with the previous job, but actually there isn't too much frosting on this job."

Mr. Byron: I think that is referring to an experimental job and it started long after 1953; as a matter of fact, in 1955.

The Court: Is that right, Mr. Cuninghame?

Mr. Cuninghame: I didn't so understand it when I read it. There is a previous job and I marked it when I read it. Well——

The Court: What is the exhibit?

Mr. Cuninghame: That was a later one excluded earlier this morning, your Honor.

The Court: Well, isn't that what you are talking about?

Mr. Cuninghame: No. This is the previous one, as I understood it.

The Court: No. 7?

Mr. Cuninghame: No, previous refrigerator, previous job.

The Court: Oh.

Mr. Byron: Now, you are speaking about your Exhibit 6, whatever that is. 6 and 7. Now, what is 6? [1082]

Mr. Cuninghame: That is also excluded, but that is from——

The Court: Well, it's in already. Let's go ahead.

Mr. Cuninghame: I would like to read from the middle—to the middle of page 234.

Mr. Byron: Well, that gets into the booklet. What he is trying to do here is to read pieces of that little booklet that has been excluded, read them piece by piece into the record. That's been——

Mr. Cuninghame: No, your Honor.

The Court: What page?

Mr. Cuninghame: Page 234, sir, and over to page 235 is really what we get to. I will exclude that booklet part. It's just the beginning is all.

The Court: You mean the question on 235?

Mr. Cuninghame: I would like to read, I think, the whole page. I think I ought to start, it seems to me, on 234, in the middle, and read through 235.

The Court: Well, you don't have to do it. These jurors know that the Admiral Company is a big corporation, and that's all you are trying to bring out.

Mr. Cuninghame: All right, sir. If your Honor rules against it, of course—may I have the figures on 235?

The Court: No.

Mr. Cuninghame: The percentage figures, middle of the [1083] page, 5 per cent of the total billing?

The Court: For the advertising costs?

Mr. Cuninghame: Yes, normal advertising. Five per cent of total billing.

The Court: Well, what possible relevancy does the fact that Admiral Company spends 5 per cent of their total billing on advertising have on any issue in this case, Mr. Cuninghame?

Mr. Cuninghame: Your Honor, it seems to me it



has a relevancy on the—fixing of a reasonable royalty.

The Court: Do you think there is a correlation between payment of royalties and advertising costs?

Mr. Cuninghame: Some. I agree it could be remote, but I think some.

The Court: Well, I can't see any, and so the objection to this line of examination is sustained.

Mr. Cuninghame: Your Honor has sustained it?

The Court: Yes. I think if there is anything here as to what they get for the machine, I think that's important and you may bring it out, because the only testimony that has come out is the retail price. But Mr. Parker says that it was a reasonable royalty based upon what the company received and not the retail price, so if you want to bring out what the wholesale or manufacturer's price is, you may.

Mr. Cuninghame: Well, your Honor——

The Court: The price from the manufacturer to the [1084] wholesaler, that you can bring out.

Mr. Cuninghame: Your Honor, that has been in the case in the first day in the answers to the interrogatories.

The Court: Oh. All right. I know that, of course, would be all right. I didn't know that that was in evidence.

Mr. Cuninghame: One thing that must go in here—I think I spotted it here—I haven't been able to find it. Your Honor, I seem to have lost it.

The Court: All right. You can bring it up a little later.

Mr. Cuningham: We will have to skip this thing. I have not been able to read the thing straight through and I cannot put my finger on the statement. Of course, it's a bit difficult because there is so much repetition in these things to skip.

The Court: You can close this deposition and come back to it later.

Mr. Cuningham: Well, sir, the only other one is the Eger one, and I am pretty sure that the point that I had in mind was in the Johnson deposition. Maybe Mr. Byron would cure my lapse and read it.

Mr. Byron: I don't know what your lapse is, but I'd be glad to help you if I knew, but I don't know what your lapse is.

Mr. Cuningham: Do you have anything you want to read in Johnson? [1085]

Mr. Byron: Not a bit.

Mr. Cuningham: I remember what it was, but I can't find it. Well, sir, I would like to——

The Court: You will reserve the right to complete Johnson?

Mr. Cuningham: All right. Thank you. I guess we will go over to the last one—or not the last one. I have no desire to read Sheridan. He merely identifies the booklet. But Eger, I think, is a short one, and that is on page 243.

The Court: Go ahead. [1086]

(Thereupon the deposition of Edmond I. Eger, a witness produced in behalf of Plaintiff, was read into the record, with Mr. Cuningham reading the questions and the Court Crier reading the answers, as follows:)

## DEPOSITION OF EDMOND I. EGER

“Q. Will you state your name, Mr. Eger?

A. Edmond Eger.

Q. Where do you live?

A. Flossmoor, Illinois.

Q. What is your business?

A. I am advertising director for Admiral Corporation.

Q. How long have you held that position?

A. Since March 1st of last year.

Q. What was your business prior to March 1st of last year?

A. I was in the advertising agency business.

Q. In connection with Admiral? A. Yes.

Q. What agency?

A. Russell M. Seeds Company, and prior to that, my own agency, Cruttenden & Eger.

Q. Can you give me a rough idea of the period of time you have covered now? Give me the dates.

A. Well, Cruttenden & Eger, from about 1922 to about 1951. Then Russell Seeds, I have to figure it out. If it is a year prior to March 1st of last year, from 1953 to 1954. [1087]

Q. There is a gap there, Mr. Eger?

A. No, there shouldn't be, because I went right from Cruttenden to Russell M. Seeds. I was with Seeds for about a year.

Q. You are probably a little early when you left Cruttenden & Eger. You said 1951. You tell me. I don't know.

(Deposition of Edmond I. Eger.)

A. I would have to check it up if you want the exact date.

Q. There was no gap in your connection?

A. No gap, no. [1088]

Q. Did you have any experience in the electric appliance field in either of these two companies, advertising agencies? A. Yes.

Q. What, briefly?

A. Well, we handled the Admiral account from, oh, about 1936 on.

Q. In both Cruttenden & Eger and Russell Seeds? A. That is correct.

Q. That is, were they successive handler of the Admiral account?

A. Yes. When I went over to Russell Seeds I brought the Admiral account with me."

Mr. Byron: I frankly do not see——

Mr. Cuningham: I want to skip the rest of that page. I think we have got Siragusa Exhibit 1 on Page 246. We will skip that and go to Page 249, bottom of the page:

"A. Our budget for this year——"

Mr. Cuningham: Oh, I am reading your answer, I guess.

The Court: Well, it seems to me that that is nothing material. I have read down to Page 253, and I cannot find one question or one answer that has any relevancy to this case.

Mr. Cuningham: All right, sir; let us start on Page [1089] 253 at the top:

(Deposition of Edmond I. Eger.)

“Q. Well, now, if you can throw your mind back to the first contact with Admiral’s appliance Division, which was roughly in 1945 and ended probably in 1948, can you recall what your principal pitch was on the Dual-Temp in the advertising? By that I mean, did you advertise the moist-cold feature principally or were there other features that you stressed equally?

A. Well, there were other features that we advertised, but the moist-cold compartment was the main feature that we stressed.

Q. And that was true throughout that two- or three-year period, was it not?

A. I believe so, yes.

Q. I am willing to make that answer subject to correction if we get the advertising books down here and look through them.

A. Well, I remember we had a lot of ads that had a heading on them, ‘No Defrosting.’

Q. That was a feature, too?

A. That was a feature, and that was the so-called principal feature. I also remember that we, if you want to call it, sub-featured the freezer compartment, the sterilamp.

Q. I am familiar with enough of your advertising that I [1090] think I know that, and we have samples here. I would like for you to glance quickly through Admiral interrogatory Exhibits I through N and tell me if you recognize those and if they refresh your recollection as to these features, or if you want to amend your testimony.



(Deposition of Edmond I. Eger.)

A. No, I think my memory was very good.

Q. I do, too, sir. Is there anything you would like to add as the result of your looking through that?

A. No. This merely confirms my observation here that all of these ads were prepared by Tatum-Laird. I had no responsibility for those.

This one (indicating) I remember because of the words 'No Defrosting.'

Q. Referring by 'this one' to Interrogatory Exhibit I.

You would accept that as a representative group of the advertising, as you know it, for the Dual-Temp refrigerator?

A. For the Dual-Temp refrigerator, yes."

Mr. Cuningham: Does your Honor's ruling extend to the next page?

The Court: Yes.

Mr. Cuningham: I believe that concludes Eger, and I did not intend to put anything in on Mr. Sheridan. I think I could find that if I took time. [1091]

The Court: What about Bailey and Rengel? Do you want now to read Bailey and Rengel?

Mr. Cuningham: No, sir.

The Court: Then you are waiving Bailey and Rengel except insofar as it may become relevant in your rebuttal; is that right?

Mr. Cuningham: I think so, sir, or possibly if there is any occasion to use it on their case for

impeachment purposes or cross-examination. I understood that we could use this type of deposition for any purpose in the case.

The Court: Are Bailey and Rengel in the courtroom?

Mr. Cuningham: Well, perhaps we ought to identify them. I forgot.

Mr. Byron: I can tell you exactly who they are. Bailey is a man in the patent department of Admiral who at one time prepared patent office drawings and later developed into making preliminary drafts of patent applications and does some amendment work under a superior.

The Court: I do not care about that. Are they here in the courtroom?

Mr. Byron: No, no; just routine.

The Court: Is Rengel in the courtroom?

Mr. Byron: Oh, no.

Mr. Cuningham: They were both patent people, patent lawyers. [1092]

Mr. Byron: There is nothing in there that is pertinent to this case.

The Court: Well, the deposition of a person cannot be used to impeach anyone else except the person who gave the deposition, Mr. Cuningham.

Mr. Cuningham: Your Honor, if the deposition established facts contrary to what the testimony is——

The Court: I do not want to argue with you on that now. You are not going to read either Bailey or Rengel?

Mr. Cuningham: Not now, sir.

The Court: Very well. Do you have any other testimony at this time?

Mr. Cuninghame: No, but we have some exhibits to offer. The first ones that I see are ones that Mr. Kolisch and Mr. Maguire, I believe, discussed. Unfortunately, Mr. Maguire is trying a case and cannot be here, and he has indicated the ones that he understands Mr. Kolisch agreed to, and I believe one or two others that Mr. Kolisch did not agree to that he wanted to offer. Now, I can leaf through those.

The Court: First, I want you to find the testimony that you think is relevant on Johnson. There is no use of keeping a jury here while you identify documents for an hour or two, and therefore what we are going to do is to take whatever testimony you have, and then we will excuse the jury until next week unless you want to go on today, [1093] Mr. Byron.

Mr. Byron: I would just like to mention this, your Honor, that Mr. Cuninghame worked on us a long, long time to get in a Steele deposition, and finally we said that we would agree to stipulate that if he were called as a witness he would testify as follows: Question and answer form.

Now, we have done that. Mr. Cuninghame wanted him in badly. Now we want him in, too.

Mr. Cuninghame: No, your Honor, my understanding and my recollection has been greatly refreshed by reading the transcript of the pretrial proceedings for November 7th, and I am unwilling to take the risk, and I do not think it is worthwhile,

of any error in this case by offering the deposition of the deceased Mr. Steele. My attitude has changed completely since our record has been made. I do not think we need his testimony on dates, so I decline to offer it, and I object to it being offered by the other side.

Mr. Ramsey: We have a stipulation on that.

Mr. Cuningham: We had no such stipulation that I was aware of. I was offered a bargain and did not take it.

Mr. Byron: Mr. Cuningham begged for it——

Mr. Cuningham: That is true; I thought if I were to use it, but I have declined the stipulation.

The Court: Mr. Cuningham, you called my attention to [1094] that, that there were no other offers connected with the offer to introduce Steele, and I took issue with you at the time. Then it developed that downstairs, outside my presence, a stipulation was entered into.

Mr. Cuningham: I do not deny that, sir.

The Court: And then Mr. Ramsey called up, and he said that your recollection was correct and that the testimony of Steele could be admitted regardless of any other deposition.

Mr. Cuningham: I do not deny that, sir, but the point I am trying to make—I may not be too clear about it—is that I did not accept a thing, and I would not accept it until I had offered it. I do not need it now, and I do not think we want it in the record. That was a unilateral thing, and it was all tied up with the depositions of Anderson and



Bonning. I do not want any of them now. I think our record is complete.

The Court: Mr. Byron, in the absence of a written stipulation, which worked both ways, the objection of Mr. Cunningham will be sustained because a stipulation apparently was made outside my presence, and I do not know the full reach of it. Mr. Cunningham says that it only permitted him to introduce it, and I am willing to accept that.

Now, Mr. Cunningham, will you take a look and see which part of Johnson that you want. [1095]

Mr. Cunningham: I will, sir.

The Court: And then we shall excuse the jury.

Mr. Cunningham: I think I have it, sir.

The Court: What page?

Mr. Cunningham: It begins at the bottom of Page 237 and runs over a little beyond the middle of Page 238. I think it is probably not covered by your ruling. The pertinency, your Honor, is the connection with the hypothetical question.

The Court: Down to the bottom of the page?

Mr. Cunningham: About the middle, a little below the middle of 238.

The Court: Go ahead.

(Thereupon excerpts were read from the deposition of Wallace Johnson as follows, with Mr. Cunningham putting the questions and the Court Crier the answers.)



## DEPOSITION OF WALLACE JOHNSON

“Q. Have you ever, and by you I mean Admiral Corporation, ever used the pitch to your dealers and distributors that the Dual-Temp is a high-profit item, higher than the conventional type for them?

A. That would be true because of the higher list prices. There are more unit dollars involved.

Q. They make more unit profit? [1096]

A. Well, sometimes they make more unit profit, but sometimes they give it away in trade-ins.

Q. If they didn't give it away, they should make more unit profit, is that right?

A. That is right.”

Mr. Cuningham: That is all, if your Honor please, subject, of course, to these offers and, as I understand, to our session making the record on Friday.

The Court: The plaintiff rests except for the introduction of exhibits and the offer of proof that plaintiff desires to make.

Mr. Cuningham: May I ask one question about that? I would prefer, I think, to say that we rest after we make our offer of proof because it is possible that there might be some hangover from that. That is my only reservation, your Honor.

The Court: The thing I want to know is whether there is any useful purpose keeping the jury here this afternoon.

Mr. Cuningham: I agree, your Honor, wholeheartedly, and we have these very few exhibits. They would not probably have much chance to read them anyhow.

(Discussion off the record.)

The Court: Ladies and gentlemen of the jury, as you probably know, we are shy courtrooms in this building. We [1097] have four judges and two an a half courtrooms, and so I am going to have to give up this courtroom for a little while on Monday morning. In order to make it unnecessary for you to stay around here when some other judge is hearing a matter, I am going to excuse you until 11:00 o'clock on Monday morning, and I think that will be sufficient time for Judge McColloch to dispose of those matters.

You have only heard one part of the case, the plaintiff's case, and you have not read some of the exhibits that plaintiff will offer, and likewise, as it has become quite apparent to you by now, there is some evidence which I regard as immaterial in this case, which I shall summarize for you in my instructions; therefore, I want to admonish you once again before this long vacation, please do not make up your mind on this case, and you have quite a bit of time between now and next Monday, so do not talk about it with anyone else. In the arguments of counsel the salient features of this evidence will be reviewed for you. Have a happy Thanksgiving, and you are now excused until next Monday morning at 11:00 o'clock.

(Whereupon the jury retired from the courtroom at 2:55 o'clock p.m.) [1098]

(The following proceedings were had out of the presence of the jury:)

The Court: All right. Now, go ahead, Mr. Cunningham. Mr. Kolisch, why don't you stand by him and see if we can't get the record complete?

Mr. Cunningham: Well, maybe we can speed things up a little bit because I have the original exhibits here that I will reach after we finish with Kobernuss, and if you could let somebody else besides Mr. Kolisch examine them——

The Court: No. Let one man do it. Do both sides waive any requirement that the exhibits be introduced in the presence of the jury?

Mr. Byron: I will waive that.

Mr. Ramsey: Yes.

Mr. Cunningham: Yes.

The Court: Both sides have waived?

Mr. Cunningham: Yes, your Honor.

(Discussion between counsel.)

The Court: I think that rather than try to complete the record now on the exhibits that it might be well for you men to get together and then offer them on Friday morning at 10:00 o'clock.

Mr. Cunningham: All right, sir.

The Court: It is apparent now that you are not fully prepared. [1099]

Mr. Cunningham: My difficulty is that Mr. Maguire did it and I am trying to pinch-hit for him and I don't really know, I guess.

The Court: All right. You can complete the record on Friday, at which time I will hear your motions at the same time.

Mr. Cunningham: Thank you. Well, we might

save time if we look at these. We are going to offer them Friday.

The Court: All right. You can use the courtroom.

Recess until Friday at 10:00 o'clock.

(Whereupon, at 3:00 o'clock p.m. an adjournment was taken until Friday, November 25, 1955, at 10:00 o'clock a.m.) [1100]

Friday, November 25, 1955, 10:00 A.M.

the trial herein was resumed, pursuant to adjournment, and further proceedings were had as follows:

The Court: As I understood our position last Wednesday, we were to come back today in order to permit you, Mr. Cuninghame, to make a record.

Mr. Cuninghame: Yes, sir; and first, you know, to complete our offer of exhibits as to which we agreed.

The Court: Have you and Mr. Kolisch gotten together on that?

Mr. Cuninghame: With about three exceptions, your Honor, we have. Suppose I offer them now. There is no other business. The ones I will offer first there is no dispute about.

The Court: Just give the numbers.

Mr. Cuninghame: I wish Mr. Kolisch would keep a weather-eye on me. I do not want to slip on this.

(Discussion off the record.)

Mr. Cuninghame: I offer in evidence Plaintiff's Exhibit 6-XX, Plaintiff's Exhibit 6-UU, Plaintiff's

Exhibit 6-Y, Plaintiff's Exhibit 6-X, Plaintiff's Exhibit 6-W, Plaintiff's Exhibit 6-T, Plaintiff's Exhibit 6-U, Plaintiff's Exhibit 6-V.

The Court: Are those the only exhibits that you are offering on which there is no dispute? [1101]

Mr. Cuningham: No, sir.

(Discussion off the record.)

Mr. Cuningham: Your Honor, we have agreed upon portions of Exhibits 6-Z, 6-AA and 6-DD. Those are pages taken from those exhibits.

The Court: Are there any objections to other portions of the documents?

Mr. Cuningham: We have agreed upon eliminating the other portions, your Honor.

The Court: All right. Offer them and then submit them.

Mr. Cuningham: May I offer these simply as pages from those three exhibits?

The Court: Do you have now copies of the pages which you are to substitute in lieu of the original exhibit?

Mr. Cuningham: My own feeling is, your Honor, it would be clearer if we identified the pages. They were not marked, you see, page by page. These were bound in one group and given an exhibit number.

The Court: Go ahead.

Mr. Cuningham: I am sorry, I do not know how to do it, to be clear about it.

The Court: May I suggest that you now go to the controversial matter and came back—you do



not need me for the exhibits that will be admitted without controversy. [1102]

Mr. Cuninghame: Your Honor, we do need you because I am postponing just a minute until I get the proof in those exhibits as to which there is objection and upon which your Honor will pass upon.

The Court: That is precisely what I said. Let us go to those.

Mr. Cuninghame: There is just one more. May I take a moment?

The Court: All right.

Mr. Cuninghame: Your Honor, from Exhibit 6-DD, and there is no objection to any of these, we offer six pages which are identifiable, I believe, by simply the last two words that are on each, and I quote: "Essential Features," "Standard Cycle," "Proven Mechanism," "Five Working Parts," "Dependable Power Plant," and "Adjustable Controls."

And from the same exhibit, if your Honor please, we offer the following similarly identifiable pages, being six in number, and I quote: "Celery and Olives," "Fresh Foods," "Cooked Foods," "Hydrator Pans," "Air Conditioning," "Equipment and Craftsmanship"—those being also from Exhibit 6-DD.

From 6-AA we offer five pages identifiable by the little corner printing in the upper right-hand corner of each page: "Food Preservation by Ice Refrigeration," "Food Preservation by Dry Cold

Mechanical Refrigeration,” [1103] “Efficiency of Dry Cold Refrigeration Process,” “The Answer to Proper Food Refrigeration Is Air Conditioning,” and “Here Is Evidence of Difference in Results.”

Also, if your Honor please, we offer from Plaintiff’s Exhibit 6-C Pages 2359 through 2372, inclusive, except the opening paragraph on Page 2359 which is X’d out, being the license to the Standard Refrigerator Corporation, and Plaintiff’s Exhibit 209 in the Stewart-Warner case.

We also offer again from Plaintiff’s Exhibit 6-C Pages 2373 through 2384, being Plaintiff’s Exhibit 210 in the Stewart-Warner case, that being in printed form, your Honor. We have here the type-written form of, I believe, the same license which is to Apex Electrical Manufacturing Company and has heretofore been marked Exhibit 6-AAA.

We offer, and also identify herein as Exhibit 6-BBB-1, -2 and -3, three letters with return receipts as to which there is no dispute. Now, if your Honor please——

Mr. Kolisch: Just a moment, Mr. Cuningham. With respect to the portions of the Exhibit 6-C which Mr. Cuningham has submitted, I want to make clear that those are portions from the Stewart-Warner record which Mr. Cuningham has cut out. They relate to certain license agreements to which we have no objection; however, we are not admitting the admissibility of 6-C generally. This is just the license agreements which you have cut out of 6-C. [1104]

Mr. Cuninghame: That is my understanding. You are entirely correct.

The Court: All right.

Mr. Cuninghame: I think there is—I omitted one paper to which there is no objection.

Mr. Kolisch: No objection.

Mr. Cuninghame: Also, we offer 6-C. Now, if your Honor please, I offer 6-YY and 20 as to which there is objection. I offer it without further explanation.

The Court: What are they?

Mr. Cuninghame: Do you want me to say, sir?

The Court: Yes.

Mr. Cuninghame: The first one, 6-YY, is self-explanatory. It is headed "Potter Refrigerator Corporation Sales of Refrigerators Embodying the Potter-Bronaugh Patent No. 2,056,165 and Potter Patent 2,258,959," a three-page exhibit which shows the model numbers, which distinguishes the type of refrigerator and number sold and the amounts received. It is offered and admitted; that is, the authenticity is admitted in this case already. It is offered as proof of sales by the plaintiff's direct predecessor without any licensee or any mention here of direct sales, and I see no reason why it should not be admitted.

Mr. Kolisch: The objection to that, your Honor, is that this bears, it has to do with Bronaugh-Potter Patent [1105] 2,056,165 which is the original, and another patent, 2,258,959. These are sales. We do not know what has to do with the original Potter

patent and this other Potter patent. This is all intermingled.

The Court: There were two patents?

Mr. Kolisch: There were two patents.

The Court: In the Stewart-Warner case actually there were three patents.

Mr. Kolisch: There were three.

The Court: Now, do I understand that when the patents were surrendered there was only one patent surrendered for this reissue patent?

Mr. Kolisch: Yes, the 2,056,165 which reissued.

Mr. Cuninghame: If your Honor please, as I said in my description, these are identifiable and distinguishable, the patents that are involved in each type of refrigerator reported on that list, and it is covered by the Potter deposition already in record.

The Court: I am going to admit it.

Mr. Cuninghame: If your Honor please, I offer Exhibit 20. That is a prospectus of the Admiral Corporation. I quote from Page 19.

The Court: A prospectus?

Mr. Cuninghame: Yes.

“Refrigeration Patent Corporation and [1106] Potter Refrigerator Corporation, holders of certain patents referring to electric refrigerators known as the ‘Potter patents,’ have filed suits in the District Court of the United States for the Northern District of Illinois against Stewart-Warner Corporation, claiming that equipment manufactured and sold by said Corporation, the patents, patent applications, licenses, tools, jigs and dies relating



to which the Company has contracted to acquire from said Corporation, infringe said Potter patents. The Company is not a party to these suits, which are now on trial. In the contract between the Company and Stewart-Warner Corporation, the latter has agreed to indemnify the Company against any loss from infringement of the Potter patents prior to October 24, 1944. In the opinion of the Company the outcome of the Potter litigation should not materially and adversely affect its prospective business in the electric refrigerator field."

The date of the prospectus is November 15, 1944. The contracts, as your Honor will recall, with the option are already in evidence in this case, and I see no reason why this should not be admitted. [1107]

The Court: The offer will be rejected. Objection sustained.

(The offered exhibit and previously referred to was thereupon rejected.) [1108]

The Court: Now, I might say that with reference to the statement I made to the jury which I will repeat in my instructions, to the effect that nothing that transpired in the Stewart-Warner case affects any issue in this case except the fact that the Court of Appeals held the patent invalid, and that was the basis for the issuance of the reissue patent—I make that statement not only because of the testimony introduced in the trial, but also because of the representations that were made to me in connection with the pretrial, at which both parties submitted argument and evidence and ex-



hibits. And looking toward the admissibility of certain testimony from the Stewart-Warner case, I make this statement now in order to complete the record.

Mr. Cuningham: I would like to ask Mr. Kolisch who he represents?

Mr. Kolisch: I think that's a question of record, your Honor.

Mr. Cuningham: You represent both Admiral and Amana?

Mr. Kolisch: Do you want me to answer this interrogation?

The Court: This is kind of a strange request when here he is appearing on behalf of Admiral and Amana. I don't think that there is any dispute about that. He is a partner of Elmer Ramsey and Elmer Ramsey has come in and said that he represents both parties.

Mr. Cuningham: I know that, sir. You will recall [1109] that Mr. Kolisch wasn't with us, unfortunately, at the beginning of the lawsuit, and I just wanted to be sure. Perhaps he would have no serious objection to clearing up this matter now on the record. I want to be sure what parties or party he represents and I want to know what parties or party he feels responsible to, I want to know what party or parties he gets authority from to act in the case, and I want to know by which party or parties he was selected to appear in the case.

The Court: Well, what difference would all that make, Mr. Cuningham?

Mr. Cuningham: I think it will be apparent, your Honor, after my questions are asked.

The Court: Well, you asked the questions. When a man appears in this court on behalf of certain clients, he has authority to bind them.

Mr. Cuningham: And that means that all these questions are answered in the affirmative, that he is responsible to both parties?

The Court: That's right.

Mr. Cuningham: I would also like to know who he is paid by, Admiral or Amana.

The Court: Well, I am not going to have him answer this question. By what right do you ask these questions, Mr. Cuningham? [1110]

Mr. Cuningham: I ask the amount of payment. I want, your Honor, simply to know who represents who.

The Court: Well, what is the purpose of the inquiry?

Mr. Cuningham: It will become apparent, your Honor.

The Court: Well, answer the question.

Mr. Cuningham: The purpose is, your Honor, to show that the Admiral corporation has—well, perhaps I can do it extemporaneously a little better.

Your Honor will recall that from the very beginning when we filed the complaint we prayed for treble damages because of the wilful character and deliberate character of the infringement of the Admiral Corporation. That was repeated in the supplemental and amended complaint and made with greater specificity during the pretrial confer-

ence at one of the later ones. Therefore, if your Honor please, under that issue, which I think is an issue for the Court—and I am taking this opportunity because the jury is not here—under that issue this ceases to be just the normal run of the mill patent suit.

I am not sure that I have made that point clear. I don't think I have really had an opportunity to because I didn't appreciate the necessity for doing so until your Honor made some rulings in the trial.

Now, of course, I know, I think, as well as anyone else, that intent is ordinarily not a part of the skin and [1111] bone patent suit. That, however, is not true here, and I think that what we have already in the record goes quite far and maybe it's complete enough with respect to the malicious, wilful, and deliberate infringement by Admiral not only its own infringement but under the new statute, and aiding and abetting of others, which is now an active infringement under the statute, the contributory infringement; also, if your Honor please, under the theory of joint tort feasons in connection with, at least, the defendants that are before your Honor, if not others.

Finally, if your Honor please—and I do not propose to ask at this time that your Honor permit me to amend to the complaint to conform to the pleadings—but my friends on the other side have had notice of all this, I don't think your Honor has. They had since April when we took the Chicago depositions shown in the record.

I would like, I think, for your Honor to realize

that there is not only these two joint tort feasorships and contributory infringement doctrine but also the further now well recognized tort of malicious interference with the business of another.

Now, of course, the others in this case is plaintiff and plaintiff's predecessor in title. The case of Green against the Munson Line, which I don't have handy here, but which is a New York case, but which has been written up [1112] in the A.L. Journal and other periodicals which I think are available here, is most interesting in exposition of that theory—not to old theory, but pretty well established now—of the action ability of the notion of interference with the business of another.

The Court: Is all this related to whether Mr. Kolisch is getting paid by the Admiral and Amana Corporation, or whether——

Mr. Cuninghame: That isn't quite the way I stated it.

The Court: Well, let's stop the conversation. Mr. Kolisch, are you getting paid by Amana and Admiral both, or don't you know?

Mr. Kolisch: I don't know, to tell you the truth, your Honor. I was retained in this case through Mr. Ramsey.

The Court: How about that, Mr. Ramsey?

Mr. Ramsey: As a matter of fact, I have been paying Pierre to help me.

Mr. Cuninghame: Well, then, I had better ask Mr. Ramsey, I guess.

The Court: Are you getting paid by both Admiral and Amana?



Mr. Ramsey: That's correct.

Mr. Cuningham: To whom are you responsible, both of them?

Mr. Ramsey: Both of them, I guess. [1113]

Mr. Cuningham: Who selected your office?

Mr. Ramsey: I don't know.

Mr. Cuningham: Well, how did you come to get the case?

Mr. Ramsey: Why, he asked me to.

Mr. Cuningham: Who?

Mr. Ramsey: I really don't know which one asked me. I think originally Lou Johnson did. They were the ones in here and I have represented him, I know that, prior, and frankly——

Mr. Cuningham: Well, if your Honor please, this business of defending others—and also in connection with what will be my first offer, simply because it was last rejected—a little booklet, “The Admiral Story” is quite enlightening.

The Court: Well, no speeches, Mr. Cuningham. I am sick of those. You just tell me your offers and I will pass upon them.

Mr. Cuningham: Well, I would like to have an order, if your Honor please, that I get this information—not the amount of the bills or anything, but I would like to get full information from Messrs. Ramsey and Kolisch as to how they came to be in the case and how they divide their responsibilities, if they do. I think that's a very important part of these three causes of action.

The Court: Well, I don't. I think you have got enough information and I am not going to give you



any more orders. [1114] I think that they have fully and frankly stated their position.

Now, Mr. Ramsey has stated that he is responsible to both of them, he doesn't recall who gave him the case. I don't think that that is important anyway.

Mr. Cuninghame: Now, of course, it's only one part, your Honor, because a great deal of the evidence, as I recall it—and it will become quite specific, I think, as we go through it—bears upon this matter which, as I said, is for the Court.

The Court: Well, then, we will take it up after the end of this case if it becomes necessary.

Mr. Cuninghame: Well, if your Honor please, we want to make our record now, make our offers of proof, and in the event—it's my understanding that this was to be a pretty much final thing and we would close our case on Monday subject to this and whatever developed out of it.

The Court: Well, I segregated that issue as to the question of treble damages. That's not in the case. That's not the question that is going before the jury.

Mr. Cuninghame: As I said, I admit that is a question for the Court, but how about questions of contributory and joint infringement all alleged since the beginning, and how about the wilfulness and so on as it might affect the findings of the jury?

The Court: Well, is there an issue of wilfulness before [1115] the jury?

Mr. Cuninghame: Well, there is certainly an issue

of infringement. I suppose it might be characterized an issue of wilful infringement.

Mr. Kolisch: It makes no difference as far as the jury is concerned. It's the business of the Court as to treble damages, and I think Mr. Cuninghame is forgetting that first he has got to prove he has got a valid patent infringed and he has done everything to avoid that. I think we ought to keep to the issues.

The Court: Make your offer. Mr. Cuninghame, I am not going to put that book before the jury and I have seen what you have tried to do in this case and I don't like it. You've read the names of people who have foreign names in order to prejudice the jury against a person because he has a foreign name, and I don't like that stuff, and that's not the way I am going to conduct a case, and that's not the American way of doing it, and I have seen you do it and you are not going to do it any more.

I am going to call it to the attention of the jury, what you have done, and I think it's just disgraceful. Siragusa and these other names, the only thing you asked them, what their position was and you are going to tie it up, and after the names—these four names came out—you dropped it.

Mr. Cuninghame: Well, if your Honor please, I am very [1116] sorry if you feel that way. I certainly had no such intention and I didn't mean to cast any aspersions on his name. That is his name.

The Court: That's right. And those and the other people had Greek names too, and in this court

Greek people have a right the same as everybody else has rights.

Mr. Cuningham: Evans T. Morton and those, I——

The Court: I have seen other names too.

Mr. Cuningham: Well, all I can say is I am very sorry your Honor feels that way. I have certainly not tried to do anything with those names.

Well, your Honor feels satisfied that you don't want the particular point of this booklet, Siragusa Exhibit 1, which was marked, I guess, for this case as Exhibit 3-Z, pointed out to your Honor at this time just briefly?

The Court: No. I am satisfied that the exhibit is not admissible in evidence.

Mr. Cuningham: Well, without quoting from it, your Honor, may I say this: It makes the statement in a certain form—it's been repeated in many other exhibits—that—and it's a statement by Admiral that Stewart-Warner was first with a moist cold type of refrigerator. Now, it's perfectly obvious when they bought this business from Stewart-Warner that they knew all about the suit, they bought the business. [1117]

The Court: Mr. Cuningham, I have already told you I am not going to admit it. You have made your offer and the offer is rejected.

Mr. Cuningham: Well, just for that reason, sir, as one example of how they falsely and deliberately claimed to be first when they weren't——

The next exhibit I offer for this purpose for the record is Exhibit 3-II and it's related Exhibit

3-JJJ. 3-II is a picture of the present type of modern refrigerator that the plaintiff is interested in and -JJJ is a copy of the Potter design Patent 155,033 under which plaintiff expects and hopes to get into the business.

The Court: I have already passed upon those two exhibits, I believe, and held them to be inadmissible and the offer is rejected.

Mr. Cuninghame: Yes, your Honor. That's true of all these, you see. I am making this record.

The Court: Well, how many times are you going to have to make a record on exhibits that I have already rejected?

Mr. Cuninghame: Well, perhaps your Honor is right. Maybe I misunderstood this proceeding. I thought that we had to have it complete in the event of any interlocutory action in the Court of Appeals or other things. I didn't know.

The Court: Well, I think that once I reject an exhibit [1118] you have preserved your record. You can, if I am in error in that and you lose the case, that's the basis for appeal.

Mr. Cuninghame: Yes, your Honor. I thought we ought to do it now before the trial closes in the event there is any need of a further action.

Now, I offer Plaintiff's Exhibit 6-B. It's from Plaintiff's Exhibit 6-B, page 2534 which, your Honor, is merely a diagrammatical showing of the Stewart-Warner device. I would like to have that to show how much more close is the defendants' device in this case. That's the purpose of it.

The Court: Well, I don't think I have to rule



on that again. I have already ruled that it's inadmissible.

Mr. Cunningham: Your Honor is ruling now, sir, that's why. Now, this is the last two, I guess. For this purpose I offer Exhibit 3-HHH, and I shall not characterize it because I have no idea that your Honor will admit it. It shows the Stewart-Warner records. I might say I did have hope that you might reconsider if you saw what was in some of these things.

I also offer——

Mr. Kolisch: I would like to point out for the record that the Court has seen these. These have all been submitted before, Mr. Cuningham.

Mr. Cuningham: I think you are right, Mr. Kolisch. [1119]

I offer Exhibits 3-FFF-1, -2, -3, -4, as evidence of the impact of the Potter refrigerator on the market.

The Court: All right. All the offers are rejected.

Mr. Cuningham: Now, sir, I have also to offer and make, I think for the first time, of record here excluded portions of the depositions of Potter, Bonning, Quinn. There may be—in fact, I think there is some Siragusa, I am not certain about Johnson. I think we got most of that in. Those can be identified in your Honor's absence, if you wish.

The Court: Yes, that's perfectly all right. You can read them into the record.

Mr. Cuningham: Yes.

The Court: But I am satisfied that the portions excluded were either irrelevant or objectionable for



one of a variety of reasons which I mentioned at the time of the exclusion, so I don't see any useful purpose of my remaining here. I thought that you had intended to bring down a live witness from Seattle to make a record on.

Mr. Cuninghame: Oh. If your Honor please, maybe—and thank you for your reminding me of that—that was Mr. McChesney and I had forgotten when I was talking. I can do that right now, I believe. That is, not produce the live witness but make the record. [1120]

Mr. Cuninghame: Of course, this is on an entirely different theory, and it is not the theory that I tried to explain to your Honor which, in our judgment, means that the Admiral Corporation should pick up the tab for the industry, not just Amana, but we have certain difficulties of proof, and for that reason we are not amending the complaint to enter this theory of joint tort-feasors, contributory infringement, and malicious interference with the business of another. This is an entirely different thing, your Honor. On Page 175 of the record while Mr. McChesney was on the stand your Honor remarked, “We are here to try to find out whether Amana and Admiral infringed the claims of the reissue patent.” I continued the examination of Mr. McChesney and was cut short by your Honor's ruling.

The Court: Mr. Cuninghame, why don't you make your offer of proof?

Mr. Cuninghame: My purpose was to have him testify to an infringement of the nature, and his

testimony would have been in words and substance in accordance with this letter from Mr. McChesney which I shall now read, or a portion of which I shall now read. I am just reading the last paragraph of it. It is a one-page, four-paragraph letter.

“My wife used to say that our Potter [1121] was the last thing in the house she would part with until she could get one like it. I don’t remember exactly when we bought the Potter, but it was around 1932, and we used it until the condensation got inside the wooden cabinet and the wood rotted out. This was in 1950. We moved the Potter to the basement and replaced it with an Admiral Dual-Temp which gives essentially the same service as the Potter did. If we had not been able to get a refrigerator of this kind, I would have rebuilt the Potter box rather than go back to the dry-cold type of box.”

This was not, as we patent lawyers state, element-by-element proof of infringement. It was, however, it seems to me, perfectly admissible at the time proof of the Dual-Temp Admiral box performing all the functions in the house of Mr. McChesney.

The Court: Perhaps Mrs. McChesney should be a witness here.

Mr. Cuninghame: I can get him down on Monday to give that testimony.

The Court: You can get him down here, but he is not going to testify as to that or anything like it. The offer of proof is rejected. Go ahead with your offer of proof.

(Thereupon there was discussion between counsel off the record.) [1122]

(Thereupon, counsel for plaintiff designated the following excerpts from the following depositions as part of their offer of proof in the case:)

## DEPOSITION OF THOMAS IRVING POTTER

October 25, 1955

“Q. Now to shortcut this a little, have you any correction with respect or any disagreement with the statement of the author made on those three pages describing the refrigerator?

A. All is correct, except the last sentence in his article. That is, ‘The main point of difference as noted before is the use of the double expansion valve.’ He made an error there. He should have said, ‘the double expanders’—that is what he should have said, because we did not use double expansion valves. It was just a slip in his writing. I think it is self-evident.”

“A. Winter Hull was using a Potter box in his home, and he was terrifically enthused over it. Several times when I was at the factory, he said that he would like to interest other manufacturers. At that time he told me that they were building a large number of boxes for Stewart-Warner, that then he thought he would like the opportunity of interesting [1123] them——”

“A. (Continued): Mr. Winter Hull came to

(Deposition of Thomas Irving Potter.)

my office and brought Mr. D'Olive with him, and they both stated they were there for the purpose of negotiating for a license under my patents for the Stewart-Warner Company.

That was the purpose. I think that is a fact. That was the purpose and they stated it, and I so noted. I entered into negotiations through Mr. O'Olive with the Stewart-Warner Company. Mr. D'Olive led me to believe that they were definitely interested and sincere in their desire to take out a license——”

“Q. Mr. Potter, I show you what I believe to be——

Mr. Byron: Why don't you just show him something and ask him what it is? It doesn't make any difference what you believe it to be. You are not testifying.

Q. ——a credit memorandum of Potter Refrigerator Corporation dated September 21, 1935, attached to which is an invoice of Stewart-Warner Corporation, dated August 8, 1935.

Also, I show you a letter dated August 14, 1935, from Charles R. D'Olive to F. J. Bommer, Jr., from Potter Refrigerator Corporation, and a letter dated August 15, 1935, from Rex Manufacturing Company, Inc., to Potter Refrigeration Corporation. Do you identify those as documents produced [1124] from your regular files?

A. These documents came from my files and evidenced the return from Stewart-Warner of the

(Deposition of Thomas Irving Potter.)

two sample boxes which we had submitted to them for their examination. These boxes embodied our invention.

Q. So those boxes submitted in the course of these negotiations with Stewart-Warner, were they?

A. Yes, while the negotiations with Stewart-Warner were going on, for their examination. They were sent to Chicago and they were given full instruction on their operation and construction, and so forth.

Mr. Cuningham: I offer those four documents and ask that they be clipped together and be given the next exhibit number."

"Q. Very briefly, Mr. Potter, what was the result of these negotiations?

A. As briefly as I can put it, if I leave out the reasons why the negotiations were dropped, the negotiations were dropped. Can I be more brief?

Mr. Cuningham: No, sir, I don't think you can be more brief.

Q. Was this dropping prior to the advent on the market of any moist cold refrigerator by Stewart-Warner?

A. That was prior to their bringing out what they called [1125] their Dual-Temp box.

Q. Did or did not Mr. Bommer have any part in these negotiations?

A. Mr. Bommer was very active in those negotiations. He made several trips to Chicago. He went over our equipment in their laboratory with



(Deposition of Thomas Irving Potter.)

their engineers, explained its operation, explained the necessity of having proper balance in the combination.

Q. At that time the application for the original of the patent in suit was pending, was it not?

A. That was pending, sir.

Q. Did Stewart-Warner or any representative of it ever request access to your pending application for that patent?

A. They insisted that we show them our private papers covering the pending application. I refused to give them access to that. I told them if they were sincere in their negotiations that I would protect them on this basis, that when the patent issued, if it did not properly cover the invention, they could cancel the license for contract that they had taken out on the pending patent, and that therefore they did not need to see our private papers. I told them at that time that I did not propose to show them the private papers of our application so that they might possibly have inside information and decide to dump us overboard and then go ahead on their own to our detriment. [1126]

Q. Did anyone state to you or give you or any member of the Stewart-Warner Corporation an impression that that was a partial reason for the discontinuance of the negotiations?

A. They made a definite statement as their out, that unless we disclosed our private papers on the pending application that Stewart-Warner would not go ahead with the deal."

(Deposition of Thomas Irving Potter.)

“Q. Do you remember any negotiations with Mr. Cord?

A. Yes. Somebody—I don’t remember his name—came to my office in Buffalo in the year of 1935, and stated he represented the E. L. Cord Company, and that they felt that they would like to make a deal with us to take over the Potter Refrigerator Company, and consolidate that with one of their subsidiary companies. I have forgotten the details of the deal that they offered, but at that time they seemed quite interesting to me. We sent a Potter Refrigerator to their office in Chicago. They operated it there. They checked it and had their engineers check it. They became very enthused over the possibility.

They stated that this would fit it perfectly with the subsidiary corporation production that they had, that they could supply us with a setup that would get us going on a national basis instead of the small scale on which we were operating.

Q. Was that your desire at that time? [1127]

A. That was very much our desire, because we were handicapped for lack of capital. That was the only thing that ever held us back. And I remember very well, indeed, because of the little touch of drama in it—again I can’t remember names—but the Vice-President of the E. L. Cord Company made a trip to Buffalo. He landed there almost at midnight and asked me to come down and meet him to discuss this so that we could consolidate the deal. We discussed it. We came to an agreement

(Deposition of Thomas Irving Potter.)

on it, and I thought that we were set, and I had visions of the Potter being pushed on a national basis with ample capital.

A few days after that, I believe on a telephone conversation from Chicago—I can't remember whether it was a wire or telephone or what—but I know that we were notified from Chicago that they would have to hold up negotiations because of the Cord Company was in trouble with the Government on their financing. E. L. Cord at that time, I believe, had a controlling interest in one of the big airlines. And they asked me to hold up our negotiations until that was straightened out.

Q. When was this, Mr. Potter?

A. This was, I believe, in 1935. Cord did not get his matter straightened out, so the matter was dropped."

"Q. Now, Mr. Potter, will you go ahead chronologically and [1128] tell us what happened next with your business in household refrigerators?

A. We covered them, pushing on our dealer setup, our sales, and so forth, through 1935 and '36. At this moment, maybe there was something occurred, but I don't remember of any particular thing of significance during that period.

Q. What is the next thing of significance that you recall?

A. The next very vital thing in significance was that in the spring of 1937, late in the spring, the Rex Company, without any warning, notified us that they could no longer furnish us with boxes.

(Deposition of Thomas Irving Potter.)

That was disastrous, because in this refrigeration business your main sales to dealers, your commitments, are always lined up from, say, the first of January on through March and April, and when we were notified that Rex could not supply us that just absolutely chopped us off. There were a few boxes left from the last year, a very few.

Q. So what did you do, Mr. Potter?

A. Then when we were chopped off of that, I told Mr. Bommer that he would have to find a new source of supply. He made a number of calls on different cabinet manufacturers, discussed the matter, and he found the Sanitary Refrigerator Company of Fond du Lac, Wisconsin, and they stated that they would be interested in picking up production.

We made a deal with them to cover production. We had the tools and dies which we owned that were at the Rex [1129] Company. We had those shipped to Sanitary Refrigerator Company in Fond du Lac. They started in to line up production. But each manufacturing company has its own methods on their production line. So Sanitary, to keep it in line with their methods of production, redesigned the box and many of the tools we sent them wouldn't fit their presses, and so forth; so they redesigned it and lined up the production of the Potter box and we got nothing from them on production until much later. It was still in 1937. But by the time we had boxes, the season was over, so we had to count 1937 in our business as an absolute



(Deposition of Thomas Irving Potter.)

loss. That was very grievous, because in doing that we lost many dealers that we had.

Q. Now I notice also in 1937 a reference to Apex Electrical Manufacturing Company. What, if any, relationship between Sanitary and Apex?

A. There was a connection there. Apex came to us through Mr. Walter Frantz, who is Vice-President of the Apex Company in Cleveland, and who was in charge of all the mechanical end of their business, production, and so forth; came to me and said that he would like to have a license under our patent for the Potter type box. He explained that for several years past they had been building a conventional type, but had not been very successful with it in competition with the big operators, but they had ample resources and if they had a box such as ours which would lift them above competition, [1130] he felt that he could make the refrigerator department very successful.

Q. What was their main business?

A. Washing machines and ironers and mangles and things of that sort; but they did a small—or had a small department on household refrigeration.

Q. Well, now, will you continue? Did you reach any agreement?

A. Yes, we gave them a license. We signed the license agreement with them. We gave them, because of their—it wasn't a straight license agreement, if I can put it that way—because connected with that they promised us the thing that we had been hungry for and couldn't afford ourselves; they



(Deposition of Thomas Irving Potter.)

promised us national advertising for this type of box.

Q. Was that a large consideration in this agreement?

A. That was the main consideration, because we had not been able with Potter to nationally advertise. They promised us that they would give the biggest national advertising campaign in back of this box, bigger than anything they had ever had in their industry. That got my interest.

We made them a very special deal. That deal never would have been made if it hadn't been for that consideration. We gave them a license of 1 per cent of their factory net, but to me the main consideration was their promise of launching this nationally. [1131]

After the contract was set, a little time went on, they were to produce this in their own factory, but Mr. Walter Frantz explained that they were having difficulty in matching that in with their production.

He stated that he knew I had production at Sanitary. He wondered whether I could line up a deal for him with Sanitary to get production started, so that later on they could take it in their own plant. I took up the matter with Sanitary. At that time Sanitary had gotten started on building the Potter box. They were also on the same production line building a Sanitary box which was identical and under license from us, except that they had changed the hardware and the name plate. Mr.

(Deposition of Thomas Irving Potter.)

Frantz stated that if we would give him a different type of hardware and put their name plate on it, that would give them a chance to get started. So that was put on the production line at Sanitary for the Apex Company.

Now the Apex Company started their sales then——

Q. When?

A. Approximately the first of the year in 1938. That is when they started sales.

Q. Well, did that come to a conclusion, this license agreement with Apex?

A. Unfortunately it did.

Q. Tell us about it, please. [1132]

A. They produced during that year, and then in 1939, the first we knew of its coming to an end was when, without any notice to us, the Apex Company began dumping their boxes.

We found out only where we had dealers and they dumped them practically at half price and they ordered no more boxes from Sanitary, and I had to take it up from my end to Apex to find out what was going on. At the time I was trying to ascertain that, the two Frantz brothers—one was Walter Frantz and the other was—I don't remember his initials—I don't know the initials. He was the President. He was the financial man.

They got into a violent proxy fight between the two brothers for the control of the Apex Company.

When the fight was over, Mr. Walter Frantz was out. They came to me in Buffalo. He came to

(Deposition of Thomas Irving Potter.)

apologize, rather, for what happened, because he told me he had entered into that deal under his own initiative and in good faith. He explained to me that he couldn't tell me until this proxy fight was over, because he was a director and an officer in the company. But now that he was out, he felt privileged to tell me what really occurred.

He told me that the New York bankers instructed Apex that they would have to drop all refrigeration. I told him that I couldn't understand why a banker could dictate to a big company like Apex. He said that they had [1133] overextended inventories, that they had several million dollars in bankers' loans out to cover them, that if Apex didn't do what the bankers told them to do, the bankers could break them.

Q. All right, Mr. Potter, was the Apex agreement canceled?

A. Yes, it was subsequently canceled on October 24, 1939.

Q. Now, passing on, did you become aware of any Moist Cold competitive refrigerators on the market at about that time?

A. The time I was speaking of—there was Sanitary, Apex and Potter.

Q. Didn't you tell me once about a Continental Company?

A. That is the Sanitary. They had a trade name on their electric business. Sanitary were primarily icebox manufacturers, and the icebox had not been lost at that time. There was still competition be-

(Deposition of Thomas Irving Potter.)

tween iceboxes and electrical refrigerators. Sanitary explained to me that they didn't want to get in bad with the icebox customers so they set up a subsidiary which they called the Sanitary Refrigerator and their boxes were sold under the trade name Sanitary.

Q. Oh, Sanitary, and not Continental?

A. No, excuse me. Under the trade name Continental. They sold iceboxes under Sanitary and electric refrigerators under Continental. But it was the same company.

Q. When was the first that you noticed the Stewart-Warner Dual-Temp. Refrigerator on the market?

A. To the best of my memory, Stewart-Warner was placed on the market in the first part of 1939. Now that is to the [1134] best of my memory. It could have been in the fall of 1938, but in my memory as well as I can locate it, it was in the first of 1939.

Q. Did you have any knowledge with respect to any manufacture by Rex for Stewart-Warner at that time?

A. I had very intimate knowledge at that time, sir.

Q. What was it?

A. Rex was manufacturing for us. They were also manufacturing for Stewart-Warner on their conventional type. They were also manufacturing, if my memory serves me correctly, for the Williams Iceomatic Company, I believe. I believe they



(Deposition of Thomas Irving Potter.)

were manufacturing for Atwater Kent in a small way. I think also—now, this, I am not certain of—I think that they were building some boxes for Philco.

Q. What were they building for Stewart-Warner, if you know?

A. They were building conventional boxes.

Q. Back in 1937; is that correct?"

"A. They were manufacturing back in 1937, 1938 for Stewart-Warner. At the time we were brought into negotiation with Stewart-Warner by Mr. Winter Hull, Stewart-Warner was one of their biggest customers. Then from that time on, after the Stewart-Warner deal fell through, we had added difficulty in getting production. They didn't turn us down, but we had difficulties. [1135]

Q. Who didn't turn you down?

A. Rex did not tell us that they would not produce. We had difficulty in getting it through. I sent Mr. Bommer down there to find out why. I went down there myself at one time.

Q. What did you find out?

A. I found out from Mr. C. C. Hull, the President, that they were having financial difficulties to handle the big volume, that Stewart-Warner had told them that unless Stewart-Warner could put their own production man in charge that Stewart-Warner would pull out. So as I protested with Mr. C. C. Hull on our delays in production, he told me that he was sorry, but his hands were tied because he was in a strange position of owning a business



(Deposition of Thomas Irving Potter.)

and having lost the control of his own production.

Q. Lost it to whom?

A. To the Stewart-Warner through their man that they put down there as a production man. I have forgotten the name of the man. I met him. He was a very dynamic, domineering personality, and he is unquestionably—he ran the works there.”

“Q. What was your agreement with one William T. Morris under the date of September 20, 1940, on the agenda there? I am referring to the agenda.”

“Q. Now, what was—give us briefly and generally the [1136] negotiations with William T. Morris. Who was he?

A. He was President of the American Chain Company. Mr. Morris had a great deal of experience, and a wonderful background in commercializing patents. Mr. Morris made his first money in the famous Weed chains, and the anti-skid chains for automobiles. Mr. Morris told me at the beginning that he bought the chains with which he assembled the anti-skid chains——

Q. Will you get down to your negotiations with Morris?

A. I am trying to give you the background.

Q. All right.

A. Now, we had been so injured with our commercial efforts we did not have enough working capital to overcome that. Mr. Duncan, who was the patent attorney, in whose office Mr. A. Russell Bond had his office—Mr. Bond was my patent at-

(Deposition of Thomas Irving Potter.)

torney at that time. Mr. Bond died. Mr. Duncan carried on Mr. Bond's patent work that was still in the office for us, representing us. I had met Mr. Duncan while Mr. Bond was alive, and I okayed his taking up and continuing our patent work after Bond's death. So I made numerous trips from Buffalo to New York to confer with him. During one of those trips Mr. Duncan suggested that he was well aware of our general situation and that if I could interest Mr. William T. Morris, the President of the American Chain, in my situation, he felt that that would answer all of our problems. [1137]

He introduced me to Mr. Morris. We had numerous sessions, conferences. It ended up with our giving Mr. Morris a license under the Potter Patents, for the purpose of his taking charge of our entire patent situation, and he would sub-license manufacturers under these Potter Patents. That would relieve us of all the expense and so forth and so on, and he had the prestige and position and he had the capital.

In that agreement, Mr. Morris included in that agreement that in order to make these patents respected, if necessary he would bring proper suits. He would supply all the costs of any litigation, and that he would personally devote his personal time and attention to this, and he would not delegate it to somebody else.

Mr. Ramsey: Mr. Cuningham, may I interrupt? This is a very interesting story. I doubt that it has

(Deposition of Thomas Irving Potter.)

any materiality or pertinence to any issue in this case. This proceedings has been going on now from 2:00 o'clock until half-past three. As you know, this case has been set for pre-trial, and we have accommodated Mr. Potter——

The Witness: And I thank you, sir."

"Q. Will you tell us very briefly, Mr. Potter, so that we can get along here——

A. I will try to make my answers short.

Q. Did this agreement ever get you anything in the way of [1138] licenses or national advertising?

A. Mr. Morris signed that agreement. At the time he signed it, I know he was sincere, because I know there were no jokers in that contract.

Q. Was he able to produce anything?

A. Nothing happened. We couldn't find out what was going on. We began putting pressure on Mr. Morris and Mr. Duncan to find out what was going on.

I had one conference in New York with Mr. Duncan, and as representing Mr. Morris. Mr. Duncan said that as Mr. Morris got into it, he found that he would have to bring suit against different manufacturers and that I could not expect Mr. Morris to sue his customers because the American Chain Company had a large list of customers. Morris owned a lot of patents on bumpers and automobile equipment, and that he would not sue any of them, and, therefore, he was not pushing this deal.

(Deposition of Thomas Irving Potter.)

Q. So what did you do about that situation?

A. I could not get him to drop that position. We urged it. Nothing happened, and so—let me look at my notes here——

Q. I direct your attention to 1941.

A. Yes, sir; in 1941 our attorneys brought suit against William T. Morris for his failure to live up to that contract. We brought suit against him for \$500,000. [1139]

Q. May I direct your attention to an item, the second item under 1945? What was the result of that suit?

A. Mr. Morris settled that suit and paid us \$100,000 in cash as settlement in that suit.

Q. When was that settlement effected?

A. On April 10, 1945.

Q. Now if you will cast your eyes back to the entry under 1943, did any of your companies start suit against Stewart-Warner?

A. The Refrigeration Patents Corporation started suit against Stewart-Warner for infringement and that was—the suit was filed on August 12, 1943.

Q. Is the complete evidence of that suit contained in the four volumes that are stacked here on your desk?

A. Yes, those are the four volumes of the record in that suit.

Q. What was the result of that suit in the District Court?

A. The District Court——”



(Deposition of Thomas Irving Potter.)

“Q. Now, Mr. Potter, directing your attention to an entry under 1945, was the original of the patent in this suit involved in any other litigation?

A. That was involved with the General Electric Company. They started litigation against us under what they called for a Declaratory [1140] Judgment.

Q. Under what date?

A. That was October 8. They had approached Mr. Bristol to discuss with him the question of our patent, and whether they could build something that would avoid it.

Q. Had the General Electric Company built any moist cold refrigerators prior to that time?

A. No, not to my knowledge.

Q. Was that suit expected by you?

A. When Mr. Bristol stated that they had approached him and wanted to discuss it, I warned him against the tactics of the General Electric Company. This I know definitely. Mr. Bristol said, ‘Potter, don’t worry. It will not hurt anything if we discuss it with them.’ He said, ‘I will so handle it that they can’t use any discussion against us.’

He had a discussion on a Friday afternoon with the representative of the General Electric Company. Mr. Bristol based his discussion on the fact that anything that was said was off the record, but after that discussion, in which they laid out penciled drawings, sketches, made while they were in his office, they said, ‘Mr. Bristol, if this was done this way would that violate your patent?’ And he



(Deposition of Thomas Irving Potter.)

would look at the sketch and read his claim that he felt that would come under.

After five or six of those, they departed on Friday later in the afternoon.

The following Monday morning the papers were served on the officers of the Refrigeration Patents Company under [1141] Declaratory Action, claiming that the Company had threatened them, which it had not done.

Q. Now, what was the result, as you understand it, or the effect, as you understand it, on your original patent of the decision of the Court of Appeals in the Stewart-Warner case?

Mr. Byron: I object to that. That is purely calling for a conclusion.

Mr. Cuninghame: You may answer.

A. I didn't get the question.

Mr. Cuninghame: Please read it back.

(The Reporter read the question back to the witness.)

A. The first effect of that decision was that I got a flock of letters from all over the United States from patent lawyers, telling me in effect that they felt the judgment was wrong. I remember one letter that told me that if that was to be the law in patents, he might just as well quit his profession."

"Q. What did you do?

A. I immediately turned the matter over to Watson and Bristol to get or to meet the suit. We had had a settlement from Morris, and we had cash

(Deposition of Thomas Irving Potter.)

in hand. We had to pay a contingency to the lawyers who sued Morris, so we didn't have a whole \$100,000. I have forgotten exact—— [1142]

Mr. Cuningham: I don't think we need that.

A. (Continued): But what was remaining we turned over to Watson Bristol as a fund to support their work in meeting the General Electric suit.

Q. And you also continued, did you not, with the Stewart-Warner litigation?

A. Yes, they were handling both litigations for us.

Q. Did both litigations come to a sad end so far as you are concerned?

A. Mr. Bristol died in the meantime, and Watson Bristol, because they said that they had run out of cash for making an appeal on the General Electric Company, so Watson Bristol entered into some kind of an arrangement, a stipulation I think you call it, with the General Electric——"

"A. (Continued): The General Electric suit was tied in by our attorneys with the decision of the Stewart-Warner case. They explained to me that because we ran out of funds that they decided they would get the stipulation from General Electric that they would abide, and we would abide by the decision in the Stewart-Warner case.

When the Stewart-Warner case was finally decided against us by the Court of Appeals, and we had appealed it back and forth, when that was finished, they informed me that they had to abide by their agreement with the General [1143] Elec-

(Deposition of Thomas Irving Potter.)

tric and have an order issued in favor of the General Electric.

I insisted on my part that one thing should be made clear in that order, or whatever you call it, legally, and that was that we did not appeal because we did not have the funds to appeal. I did not agree with the findings of the judge in Portland.

Q. Did you then reissue the patent as a result of this litigation?

A. As a result of that litigation, when we had exhausted all that Watson and Bristol told us was our legal rights, and so forth, then I purchased the patent personally, and I took it up with Charles Ladd, a patent lawyer here whom I had known, and asked him whether he could not reissue it, because I had been told that if a patent——”

“Mr. Cuningham: I offer that in evidence and ask that it be marked Plaintiff’s Potter’s Exhibit 20.

(The photograph identified above was received in evidence and marked Plaintiff’s Potter’s Exhibit 20.)

Q. I show you the original designed patent, No. 155033, issued August 30, 1949, for a term of 14 years to Thomas Irving Potter, New York, New York. Do you recognize that patent?

A. Yes. That was a design that was embraced, partially [1144] embraced, by this de luxe cabinet that I speak of.

(Deposition of Thomas Irving Potter.)

Mr. Cuninghame: I would like to reserve the next exhibit number for the soft copy of that design patent which we can mark later as Plaintiff's Potter's Exhibit 21.

(The soft copy of the design identified above—the design patent—was received in evidence and it was stipulated to mark it later on when the soft copy was obtained as Plaintiff's Potter's Exhibit 21 in evidence.)

A. (Continued): When this man, Sanborn, organized the Continental Refrigerator Corporation—and that has no connection with the Continental Refrigerator of Fond du Lac—that is the name they chose. But he organized that and I turned over my reissued patent to them. I turned over this designed patent and turned over the model for this de luxe cabinet, whatever rights I might have in it, and they were to put capital into the business, and they were going then to go ahead on production, and so forth. I had at that time entered into negotiations with the Carrier people of Syracuse, the air-conditioning people. They were building at that time what they called a front-door opening freezer chest or rather cabinet. They had a production line, very little changes would have incorporated our box from a production standpoint.

The Carrier people agreed that they would [1145] handle the production of this de luxe type, the model which I have or which Moist Cold has. But they would produce that on a volume basis.



(Deposition of Thomas Irving Potter.)

We also lined up a deal with DuParkue—I really don't know how to spell it. It is the largest hotel supply house in the United States. They have offices all over the United States. It is something like DuParkue, but they are the largest hotel supply people, jobbers.

They agreed that they could handle the national distribution of this. That was all consolidated in this Continental Company that Sanborn set up. Then when the Korean War started—pardon me—I mean pardon me for referring to it—all steel was off the market. The Carrier people could not go ahead.

In the meantime, this man, Sanborn, had been trying to organize, and he had told me that he had connection with brokers all through the country, that he would be given free sway in how to organize that company. He would guarantee that he would have the finances inside of 90 days' time. And I am more ashamed of that than anything in my life, because after I got through with it, I considered that he was a phony. I was taken.

Mr. Cuningham: Go ahead.

A. (Continued): I am sorry. Excuse me. He had called a group of people together at a luncheon and explained his [1146] picture of this Continental and wanted them to join him in the financing.

Shortly after that, a Mr.—I think the name was Bradkin—that is approximately the name—came to me and explained he had attended the luncheon of



(Deposition of Thomas Irving Potter.)

Mr. Sanborn, that he did not like Sanborn's setup at all, and he would have nothing to do with it on that basis, but he explained that he was located in Wall Street, that he knew all kinds of money people, and if I would give him the authority, he would try to line up some capital for us. But if he did that, it would have to be on another basis than the basis that Sanborn lined up with the Continental.

The result of that was that shortly after he brought me into Mr. T. Roland Burner and introduced me to Mr. Burner as a man who had a large number of wealthy clients, that he felt could or would be interested in this situation." [1147]

## DEPOSITION OF FERDINAND J. BOMMER

April 21, 1955

"Q. And can you tell us what took place?"

"Mr. Byron: Make a note that the witness is now referring to his earlier testimony to refresh his memory, I assume.

A. To the best of my knowledge, this was discussed between Winter Hull and Charles D'Olive."

"Q. Now, incidentally, do you have an independent recollection as to Mr. Charles D'Olive? You ever met him? A. Many times.

Q. What was his connection with the Stewart-Warner Company?

A. Manager of the Refrigeration Department.  
Mr. Byron: The same objection.

Q. And now, what sort of domestic electric re-

(Deposition of Ferdinand J. Bommer.)

refrigerator was Stewart-Warner Corporation marketing at the time that these conversations first took place between Mr. Hull and Mr. D'Olive?

A. A typical one-compartment refrigerator similar to all others in the industry except the Potter.

Q. Just how, or what condition, were foods kept in, in that type of box?

A. They were subject to the same dehydration as all other refrigerators. [1148]

Q. And they had how many compartments for food preservation? A. One.

Q. And what kind of cooling unit?

A. A conventional frosting evaporator.

Q. And what about machinery for the compressor and condenser and motor?

A. That was similar to all others used in the industry.

Q. And the cooling unit in this refrigerator, that Stewart-Warner was then marketing was located in the food chamber near the top. Is that right?

A. Yes, sir."

"Q. Now, going back to the matter of the Rex Manufacturing Company and Stewart-Warner, were there any negotiations carried on between Stewart-Warner——

Were any negotiations carried on between Stewart-Warner and Mr. Potter with respects to a license under the Potter patents?

A. There were.

Q. And when was that, Mr. Bommer?

(Deposition of Ferdinand J. Bommer.)

A. I would say approximately 1935 or '36. I think that the record should be used for a date of that kind. I don't think we should have to remember back that far. As far as I recall, 1935 or '36. Around that figure." [1149]

"Q. Did Mr. Hull recommend to Mr. D'Olive that he get permission to build the Potter type box?

A. Yes, sir. Yes, sir.

Q. And was it pursuant to that recommendation that Stewart-Warner initiated these negotiations?

A. That is correct.

Q. And in that connection, was any opportunity given to Stewart-Warner to examine and test out for the Stewart-Warner Company a Potter refrigerator?

A. It was.

Q. And how many Potter refrigerators were sent to Stewart-Warner Company?

A. I know that one was sent, definitely.

Q. Well, did you see it at the Stewart-Warner Company?

A. Yes, sir.

Q. And did the refrigerator that Potter sent to Stewart-Warner have in it the advantages you have described?

A. It did.

Q. Would you name those principal advantages?

A. It had a frozen storage compartment and a separate air condition compartment.

Q. How about the defrosting?

A. No defrosting necessary.

Q. And what was the type of coil in the air conditioning compartment? [1150]

A. Finned type coil.

(Deposition of Ferdinand J. Bommer.)

Q. Now, subsequent to this model being afforded to Stewart-Warner, did they produce a different type of refrigerator than they had produced earlier?      A. They did.

Q. What type did they produce?

A. A model similar to the Potter refrigerators.

Q. Did you see the later model they produced?

A. Yes, sir. Many of them.

Q. And can you describe whether it was a replica of the Potter?

A. It was a two-compartment refrigerator very similar to the Potter.

Q. And did it have the same advantageous features that the Potter had?      A. It did.

Q. Will you name them?

Will you name those advantages?

A. I say, it was a two-compartment refrigerator, one compartment arranged as frozen foods, and ice-making compartment, and also a fresh food compartment for the storage of foods over the freezing point of water.

Q. Did the Stewart-Warner Company, to your own knowledge, make any representations to the trade and the public as to the ability of its new refrigerator to keep foods in an [1151] air-conditioned condition?

A. They made—they made similar claims to those made all along by the Potter Refrigerator Company.

Q. And what about defrosting?



(Deposition of Ferdinand J. Bommer.)

A. They made the same claims for defrosting; that it wasn't necessary to defrost.

Q. Now, did you find the Stewart-Warner box in any potential customer of the Potter Company? The new box?           A. I did.

Q. Where?

A. At the Jones Appliance Company in Milwaukee.

Q. Can you describe what occurred there?

A. I had been negotiating with the Jones Appliance Company to handle the Potter line of domestic electric refrigerators. When I went to the Jones Company to complete the negotiation and arrange for their first shipment of refrigerators, they had purchased a quantity of Stewart-Warner refrigerators, which they told me, at a price advantage——

(Continuing): Over prices quoted by Potter Refrigerator Company and therefore broke off negotiations with us.

I saw price tags on the refrigerators, which I noted at that time, which were lower than the prices of Potter refrigerators of approximate size. [1152]

Q. When did the Jones Company say anything to you about whether they—how did they compare? Potter and Stewart-Warner refrigerators?

A. In what way?

Q. What did they say about the comparability, if anything?

A. They claimed the Stewart-Warner would do



(Deposition of Ferdinand J. Bommer.)

everything that the Potter refrigerator would do. That was a Stewart-Warner claim.

Q. What about the price?

A. I said the prices on the tags on the boxes were lower than comparable models of Potter.

Q. Now, when Stewart-Warner produced the Potter type of refrigerator, where did they get their boxes from?

A. They were made by Rex Manufacturing Company.

Q. And did Potter then have any difficulty getting boxes from the Rex Manufacturing Company?

A. We did.

Q. And was Potter unable, as a result, to deliver Potter refrigerators to his customers?

A. Yes, sir.

Q. Did Stewart-Warner representatives tell you at any time——

Now, what was said—withdraw it—what was said to you by representatives of Stewart-Warner with respect to their production of a two-compartment box with an air-conditioned portion of it? [1153]

A. Mr. Berner, I don't believe I understand you.

Q. Well, you have testified Stewart-Warner produced a box comparable to the Potter box. Is that right?

A. That is correct.

Q. You have also testified that these Potter boxes, they had, for their examination?

A. Yes, sir.

Q. Now, did they have a Potter box as a result

(Deposition of Ferdinand J. Bommer.)

of a negotiation for license from the Potter Company?      A. No, sir.

Q. Well, did the Stewart-Warner Company ever negotiate for a license?

A. There were discussions about Stewart-Warner obtaining a Potter license.

Q. And was it pursuant to those discussions that a model Potter box was furnished to Stewart-Warner?      A. That's right.

Q. Did Stewart-Warner ever take a license?

A. No, sir.

Q. Did they ever take and use the Potter innovations and developments?      A. Yes, sir.

Q. Now, did Stewart-Warner do any testing in connection with the Potter box that they had?

A. They did. [1154]

Q. Will you describe that test?

A. They put the Potter refrigerator in a constant temperature room and put samples of food in the refrigerator which had been weighed before they were put in. After they were put in the refrigerator, the refrigerator was closed tightly for 24 to 48 hours and then the food was taken out and reweighed to determine a rate of dehydration by the difference in weight before and after.

Q. Now, are those conditions——

Mr. Byron: You haven't finished your answer, have you?

The Witness: I think that that was the method of test. As I said before, it was to weigh samples of food, put in the refrigerator, close the door and

(Deposition of Ferdinand J. Bommer.)

leave it closed for a period of from 24 to 48 hours, and, at the end of that noted, take the food out of the refrigerator and reweigh it so that they could determine a loss of weight in the food due to the dehydration which had taken place during its storage.

Q. Now, were those conditions comparable to the ordinary household wife's usual conditions of test?

A. They were not.

(At this point a short recess was taken.)

Q. Now, was that pointed out to Stewart-Warner that the test conditions were different than in a normal household? A. It was.

Q. And to your knowledge did they then conduct tests of [1155] the Potter refrigerator as it would be used in a household? A. I don't know.

Q. Now, after these tests and after the negotiation between Potter and Stewart-Warner were broken off, did Stewart-Warner then produce a Potter type refrigerator? A. They did.

Q. Will you describe the Stewart-Warner box that was produced subsequent to the negotiations and the test or sample box that was sent to Stewart-Warner by Potter?

A. It was a two-compartment refrigerator; one compartment for frozen storage of foods and the other for fresh foods. The fresh food compartment was supposed to be an air-conditioned compartment.

Q. And Stewart-Warner claimed that?

A. Yes, sir.

(Deposition of Ferdinand J. Bommer.)

Q. Now, after Stewart-Warner went into the production of the two-compartment box, from whom did they get their cabinets?

A. Rex Manufacturing Company.

Q. Was that the company that supplied the two-compartment box to Potter? A. That is.

Q. And did Potter then have difficulty in getting delivery of its two-compartment boxes from Rex?

A. We did.

Q. What did Potter then do about that? [1156]

A. We attempted to improve production schedules.

Q. When you failed to do that, what did you do?

A. Eventually?

Q. Yes.

A. Went to another source of supply.

Q. And was that costly to the Potter Company?

A. Very much.

Q. Would you describe what that meant to the Potter Company?

A. Well, it meant about a devastating loss of dealers.

Q. Go ahead.

A. We didn't have merchandise to deliver for a long time. Tools and dies and fixtures had to be moved from Connersville, Indiana, to Fond du Lac, Wisconsin. The tools that were used at Rex did not fit the machines used in production at the Sanitary Refrigerator Company in a lot of instances and new tools and dies had to be made, and adjustments made in the Potter cabinets, to the point

(Deposition of Ferdinand J. Bommer.)

that there were several months, not only of additional expense in adapting the tooling to the new source of supply, but also in the meantime, the loss in business that we had because we were out of merchandise.

Q. Now, do you know what arrangements, if any, existed between Stewart-Warner and Rex with respect to finances?

A. Do I know what?

If I did, I don't remember.

Q. Well, did Rex have any financial [1157] difficulties?

A. Rex had financial difficulties. Yes.

Q. And did Stewart-Warner advance them any funds? A. I don't remember.

Q. Well, was Stewart-Warner allowed to put an expediter in the Rex plant? A. Yes, sir.

Q. What was his name?

A. His name was Pat. Whether it was Walsh or Ryan—it was a short Irish name I don't remember—but Pat was his name.

Q. Where was he located?

A. In Connersville plant.

Q. At the Rex plant?

A. The Rex plant.

Connersville.

Q. Now, were all the Potter two-temperature boxes made by the Rex Manufacturing Company for Potter prior to moving to Standard? Were they the sole source of supply for Potter of the two-temperature boxes?



(Deposition of Ferdinand J. Bommer.)

A. Prior to moving to Sanitary?

Q. Yes. A. Yes, sir.

Q. Mr. Bommer, there were some boxes manufactured by the Leonard Refrigerator Company at one short period of time as an auxiliary line of cabinets. Was that a single compartment? [1158]

A. Single-compartment box was manufactured by Leonard.

Q. What was the chief sales of the Potter Company? Was it a single or double type?

A. Double-compartment refrigerator. Two-compartment refrigerator.

Q. Now, as a result of transferring to Sanitary, you mentioned difficulty with dealers. Did you lose any? A. We lost a lot of dealers.

Q. Now, do you know whether any dealers took the Stewart-Warner box of this Potter type?

A. You are talking about regular Potter dealers?

Q. Yes.

A. There were some dealers that took on Stewart-Warner refrigerators.

Q. Now, did you, personally, see the Stewart-Warner two-compartment boxes at the Rex Manufacturing Company? A. Yes, sir.

Q. Now, the Potter Company got the Sanitary Manufacturing Corporation to manufacture its cabinets from and after 1937, was it?

A. Yes, sir.

Q. And did the Sanitary Manufacturing Com-

(Deposition of Ferdinand J. Bommer.)

pany have a license to manufacture the Potter boxes?      A. They did.

Q. Potter type refrigerators from their own account? [1159]      A. They did.

Q. And would you describe that operation briefly?

A. You mean the necessary negotiations for the license?

Q. No. No, just what they did.

A. You mean what they did? They built Potter type refrigerators, two-compartment refrigerators, almost identical to the Potter refrigerators, and sold them under the name of Continental, which was a brand name that they owned.

Q. And did they do that under a license from the Potter Company?

A. They did that under a direct license.

Q. And under what name did they sell theirs?

A. Continental.

Q. Did they have their own dealer organization?

A. They had their own dealer organization.

Q. Did you go with Sanitary Manufacturing Company?      A. Become employed with them?

Q. Yes.      A. Yes.

Q. About when was that?

A. August, 1940.

Q. Were they then a licensee of the Potter Company, or became one shortly thereafter?

A. No. Their license was taken out long before 1940. Whether the license was still in existence in

(Deposition of Ferdinand J. Bommer.)

August, 1940, [1160] when I went there, I don't remember those exact dates at this time.

Q. But, in any event, you know that they were a licensee of the Potter Manufacturing Company and they did produce comparable boxes, is that right, of Potter?

A. I, personally, conducted most of the negotiations under which the license agreements were signed.

Q. And that was while you were with the Potter Company?

A. When I was with Potter Company.

Q. Whom did you conduct negotiations with?

A. Mr. B. K. Miller, President of Sanitary Refrigerator Company.

Q. And they culminated how?"

"Q. Now, could you describe the effect of the Stewart-Warner dual temperature refrigerator on the business of Potter Refrigerator Company?"

"A. The Stewart-Warner promotion of their two-temperature refrigerators was very detrimental to the Potter Refrigerator Company because of the widespread claims and the price differences, more favorable terms, more favorable advertising allowances, which Stewart-Warner afforded to their dealers.

Q. Than the Potter?

A. That Potter could afford. [1161]

Q. Which company was more adequately financed, to your knowledge?

A. Stewart-Warner Company.

(Deposition of Ferdinand J. Bommer.)

Q. Was Potter relatively new and small? Was Potter a relatively small concern as compared to the Stewart-Warner Corporation?      A. It was.

Q. What percentage of the size of Stewart-Warner would you say that Potter was?

A. I would say that it was very small. As to what per cent, I wouldn't say.

Q. You mean very small as compared to Stewart-Warner?      A. Very small."

"Q. I am asking for Potter, in comparison to Stewart-Warner. You understand that, do you not, Mr. Bommer?      A. Yes, sir.

Q. And what do you say the comparison is?

A. I said that Potter Refrigerator Company was very small compared to the Stewart-Warner Corporation.

Q. Now, when did you sever your connections with Potter Refrigerator Corporation?

A. June, 1939."

"Q. Why did you leave the Potter Refrigerator Corporation? [1162]

A. I left the Potter Refrigerator Company because I thought that conditions were such that Potter business had shrunk to an extent that I wanted to make a new connection with somebody that had a greater possibility for me, personally.

Q. Did that have anything to do with Stewart-Warner?

A. I would say the results of the shrinking of the Potter business, due to Stewart-Warner promotion, was a factor in my decision to leave."

(Deposition of Ferdinand J. Bommer.)

“Q. Now, when you left the Potter Refrigerator Company, did you receive anything from them?       A. I did.

Q. What was that?

A. I received a certificate for two hundred shares in the Refrigerator Patents Corporation.

Q. And do you still own those shares?

A. I still own them.”

Cross-Examination

By Mr. Byron:

“A. I said that the sales was as a result, not a prime condition. The prime condition was our delays in production. The result was, we couldn’t deliver and therefore there weren’t as many sales to record.

Q. Why didn’t the Jewett Company manufacture more refrigerator [1163] cabinets for Potter than they did? That is, the 25, 50, or 100 that you mentioned.

A. Why didn’t they go into a larger production setup?

Q. Yes.

A. Because the Jewett Refrigerator Company couldn’t afford to go in it. It was just financial obstacles that we couldn’t surmount.”

“Q. Please refer to the specification of the re-issue of Patent in suit, read that specification, and state whether or not it mentions fins, and fins particularly on the cooling coil 25 in the upper, relatively warm, chamber 14.



(Deposition of Ferdinand J. Bommer.)

A. There are two references 25 from the drawing. In the specification, No. 25 is described as a cooling coil. The words, 'cooling coil' cannot be construed in any other way but to include both of the notations on the drawing which designate one figure 25 pointing to the coils and the other figure 25 pointing to the fins which support the coils."

"Q. The question is: Refer to the specification in this patent in suit, read that specification and state whether or not you find the word 'fins' in that specification as related to the coil 25, or any other coil.

A. As a refrigerating engineer, the word 'fins' in the description is not necessary inasmuch as the drawing distinctly [1164] points to a—to both sections of the coil, and it is inclusive in the one unit."

"A. I would say that, as indicated on the drawing on that patent, a refrigerating engineer would know that it was a finned coil.

Q. Well, now, what appears there in Fig. 2 of the drawings is just an oblong outline, isn't it? 25?

A. Yes, sir.

Q. You wouldn't know. It might be a box, might it not?

A. I would say that this, as drawn is an engineer's designation of a finned coil. Would that answer your question?"

(Deposition of Ferdinand J. Bonmer.)

Redirect Examination

By Mr. Berner:

“Q. Now, was the failure of Rex to deliver Potter boxes the reason why you made these frequent trips to the Rex factory?

Mr. Byron: I object. That’s leading, to begin with.

A. Yes, sir.

Mr. Byron: And it’s immaterial. Irrelevant.

Q. And did that occasion expense to the Potter Refrigerator Corporation?

Mr. Byron: The same objection.

A. A great deal of expense.

Q. Both of funds and effort?” [1165]

DEPOSITION OF ROSS D. SIRAGUSA

April 26, 1955

“Q. Can you tell us briefly for the record the history of the product development of Admiral Corporation?

A. It is in a little book and that is available to you.

Q. I would be very glad to have it. May I have a copy?

A. Yes. That gives you the thumbnail sketch of the last twenty years.

Mr. Berner: The book will be marked Siragusa Exhibit No. 1.”

(Deposition of Ross D. Siragusa.)

“Q. If you will throw your mind back, Mr. Siragusa, to that period, will you tell us briefly what led to this deal?

Mr. Byron: Objection. It is entirely irrelevant and immaterial, what led to this deal, insofar as these issues are concerned, as far as the issues in this suit are concerned.

Mr. Cuningham: You may answer.

A. To broaden our distribution.

Q. (By Mr. Cuningham): Did you initiate this transaction with Mr. Elliff?

Mr. Byron: Same objection.

The Witness: I believe Elliff came to me. I am sure he did.

Q. (By Mr. Cuningham): And that was, of course, some time [1166] prior to January 22, 1944, was it not?

A. Well, I don't know when he came to us, but he did.

Q. Can you give me the time? Was it during the suspension of the refrigeration business during the war? A. I am sure it was.

Q. Well, what did he suggest?

A. I don't recall the conversation, sir.

Q. You don't recall anything about what led you to make this deal?

A. No. It is so long ago, it is very difficult to remember. I just recall that he arranged for a meeting with Mr. Hiter, and the purpose was to sell, that is, Stewart-Warner to sell the appliance division, and we made a deal. That is it.

(Deposition of Ross D. Siragusa.)

Q. Who, besides Mr. Elliff and Hiter, do you recall discussing this matter with, on behalf of Stewart-Warner?

A. I don't recall anybody else, unless the lawyers might have sat in on it, and I don't remember their names.

Q. They were on the formalities of the agreement, I suppose, and the deal was made before the lawyers came in?

A. Yes, I am sure it was.

Q. Who else in the Admiral Corporation besides yourself participated?

A. Myself and a lawyer. I think Frank Uriell—no, it wasn't Frank Uriell. I can't tell you the name of the firm, who handled that. Williams, Castle, McCarthy, it might have [1167] been.

Mr. Baltz: I don't know.

The Witness: I don't recall.

Q. (By Mr. Cuninghame): But aside from the lawyers, was there any other individual involved?

A. Not that I recall.

Q. On behalf of Admiral?

A. Yes. It was a very small deal, Mr. Cuninghame, and I took it to the board of directors and they passed it and that was it.

Q. Yes, I realize that. Were you then aware of the pendency of a suit—

A. I don't recall. I might have been at the time. I might have been at the time, but I do not recall.

Q. You do not recall? A. No."

Mr. Cuninghame: This may refresh your recollection, and thank you, Mr. Byron.

(Deposition of Ross D. Siragusa.)

I will read to you subparagraph H of Section II of the option agreement.

Mr. Byron: To which I make objection, the same objection, irrelevant and immaterial.

Mr. Cuningham: 'Stewart will indemnify Admiral against any loss from infringement of the Potter [1168] Patents arising prior to the date of the exercise of the option. Stewart will confer with Admiral before making any final settlement involving such Potter patents.'

The Witness: Now, what was your question?

Q. (By Mr. Cuningham): Does that refresh your recollection?      A. Really, it doesn't.

Q. Had you ever heard of the Potter patents before this moment?

A. Well, I have, rather infrequently.

Q. But over a sustained period of time, is that correct?      A. Yes.

Q. You have been informed, I suppose, that the plaintiffs in this action are the successors to the plaintiffs in the Stewart-Warner action and are suing on a reissue of what is referred to as the Potter patent?

A. All right. I will take that answer of yours, Mr. Cuningham. I believe it."

"Q. Now, Mr. Siragusa, I won't bother to refer to the option agreement that was annexed to the interrogatories, but I will state to you that it expressly carried with it from Stewart-Warner to Admiral lock, stock and barrel the household appliance business, refrigerators and ranges, includ-



(Deposition of Ross D. Siragusa.)

ing patents, dies, and everything. The agreement speaks for itself. [1169]

Do you recall how you operated when you took over this business during the transition period? What did you take from Stewart-Warner in the way of assets, properties, generally?

A. Well, as I recall, we took over certain tools and dies for both refrigerators and electric ranges. We took over certain equipment—not very much equipment—as a matter of fact, very little. Certain trade-marks.

Q. How about technical information?

A. Well, the technical information followed with Evans Morton and the one or two or three or four men that he brought with him. I don't recall how many men he brought with him.

Q. You don't recall now the names?

A. No, I don't.

Q. Of any of them?

A. But Mr. Morton, when you cross-examine him, he will give you that information.

Q. Thank you, sir, I will ask him that.

A. That is about all that we got. The trade-mark 'Dual-Temp' and some other trade-marks, too, which I don't recall. Maybe Zero-Zone, something like that.

Q. And patents?

A. Yes, I believe the contract specified any patents or patent applications." [1170]

"Q. Can you give me a statement, Mr. Siragusa, of what are the patent policies in general of the

(Deposition of Ross D. Siragusa.)

Admiral Corporation? Now, maybe I can help by trying to be more specific. For example, what is your policy with respect to clearance as to adversely held patents before you manufacture anything?

A. Well, I know that we try diligently, to the best of your ability, to engineer around any patents that we believe might conflict with our own ideas. Sometimes we do and sometimes we don't. But we try to engineer around any and all patents that we feel are valid patents."

"Q. Who was the first that you know of to come out with a two-temperature household refrigerator?

Mr. Byron: I object to it. It is irrelevant and immaterial.

A. I really don't know.

Q. (By Mr. Cuningham): Was it Stewart-Warner? A. It might have been.

Q. Do you know of anybody earlier?

A. I don't know of anybody earlier."

"Q. Have you had any experience in reading and interpreting patents?

A. No use in showing it to me because I couldn't read a diagram from an architectural [1171] drawing.

Q. Who would be best qualified in the Admiral organization to give us such assistance?

A. I would imagine Mr. Morton would."

(Deposition of Ross D. Siragusa.)

Redirect Examination

By Mr. Cuningham:

“Q. You mentioned as examples of your respect for adversely held patents the Radio Corporation of America and Hazeltine Corporation. Is it not a fact that you brought a declaratory judgment suit against the Radio Corporation of America to declare invalid each of its 10,000 patents in the District of Delaware a few years ago?

Mr. Byron: I object. It is irrelevant and immaterial.

The Witness: I don't recall. Can I answer that?

Mr. Byron: Yes, sure.

A. I believe we did. I believe we did.

Q. (By Mr. Cuningham): And I believe you backed down and settled the case, did you not?

A. Yes.

Q. You set up some antitrust defenses, as I recall it? A. Yes, I think so.

Q. Is that an example of your respect and cooperation on other patents?

A. Well, Mr. Cuningham, I would rather not answer that question because the answer would be so involved. There would [1172] be so many facets involved in a 10,000-patent group. Our license there would be involved. I would rather not answer the question.

Q. Did you respect the Armstrong patents in the electronic field?

(Deposition of Ross D. Siragusa.)

A. No, because certain RCA patents that we operated under got us around very nicely the Armstrong patents, we thought.

Q. Are you presently sued by the Armstrong people?

A. I believe that we are being sued by the Armstrong people.

Q. What reserves do you set up for patent liability in the Admiral Corporation?

A. I believe our annual report will answer your question.

Q. What reserves have you set up for Potter liability?      A. I don't know.

Q. Will you ascertain that information and let me know, please?

A. I don't think we have set up any reserves because we don't feel that Potter has a legitimate claim.

Q. But you are not sure. Will you be sure and let me know?

A. Mr. Baltz, you can make a note and find out if we set up a reserve on Potter. I am confident we have not."

"Mr. Byron: No. We will look up the information.

The Witness: We will look it up on Potter.

Mr. Cuninghame: And you will advise me? [1173]

The Witness: And we will advise you if we have a reserve set up. I can tell you now we probably have not.

Mr. Cuninghame: Mr. Berner directs my atten-

(Deposition of Ross D. Siragusa.)

tion to Note F in your annual statement for 1954, on page 22, and I quote:

‘The company is contingently liable under pending lawsuits, re purchase agreements and guarantees, the effect of which, in the opinion of management, will not materially affect the business of the company.’

Q. Does that contingent liability include the lawsuit in which you are now testifying?

A. I am confident that it does not. However, that question will be answered by Mr. Baltz.

Q. What contingent liabilities under pending lawsuits did you have in mind in making that statement?

A. I don’t know. You would have to ask the accountants.

Q. Who would know?

A. Leidesdorf would know. George Driscoll would know.” [1174]

## DEPOSITION OF WALLACE C. JOHNSON

“Q. There is a rather curious statement at page 11 of Siragusa Exhibit 1. I think I will read the two short paragraphs, and I quote:

‘In 1944, Admiral learned that Stewart-Warner was willing to sell’——

‘In 1944, Admiral learned that Stewart-Warner was willing to sell its luxury class refrigerator called the Dual-Temp, because it was unfamiliar with white goods and distribution problems in this field.’ ”



(Deposition of Wallace C. Johnson.)

“Q. Continuing with the quote, a new paragraph:

‘Admiral acquired the patents, tools, dies and engineering equipment for the Dual-Temp, the first and only genuine combination home freezer-refrigerator made at that time.’

Was it your understanding that that was the first combination freezer-refrigerator on the market?

A. Well, I never even thought about it at that time.

Q. I don’t think that is quite what this sentence says. I am trying to interpret the sentence. It is a curious sentence. I will read it again:

‘\* \* \* the Dual-Temp, the first and only genuine combination home freezer-refrigerator [1175] made at that time.’

Now, of course, ‘at that time’ could refer to the precise year 1944, but it wouldn’t make sense because nobody was making anything for civilian use at that time in the refrigeration line, were they?

A. Not that I can recall.

Q. It must mean at that general early 1940 period.

A. Yes.”

“Q. Now, the booklet, Siragusa Exhibit 1, page 12, says that the company poured \$750,000.00 into voicing its claim that the best postwar appliances and radios would be those which bore the Admiral trade-mark.

Was that an unusual sum, \$750,000.00, to spend on voicing such a claim?

(Deposition of Wallace C. Johnson.)

A. I don't think I would be qualified to answer that.

Q. Does it seem like that to you? Would you call that about normal?

A. I wouldn't know what the other people spent.

Q. I mean normal for Admiral Corporation.

A. What?

Q. In one year, \$750,000.00 in advertising.

A. Well, as that states there, that was before we produced anything, isn't it?

Q. Yes, in 1944. [1176]

A. It is a promise from Admiral. They are specifying we spent that money to tell the public.

Q. What is the normal advertising budget on just refrigeration alone for Admiral to spend?

A. Figure about five per cent.

Q. Five per cent of what?

A. Of your total billing.

Q. That is the general rule, is it?

A. General. I would say it could be four and a half per cent, but between four and a half per cent and five per cent.

Q. Does that apply to all appliances?

A. Practically so. I mean, you might not spend that much on air conditioners, but generally speaking, on appliances it is four and a half to five per cent. Now, when I say that, I should say that is into your manufacturing costs, not of the necessary distributor billing. But you figure your cost of making the product, and you figure five per cent in for advertising over all.

(Deposition of Wallace C. Johnson.)

Q. It would be lower than that on distributor billing?      A. On distributor billing, yes.

Q. Is that about the same for the other products, radios and television?      A. About the same.

Q. Has that been true during the postwar period generally?      A. Postwar period? [1177]

Q. Yes.

A. Well, I wouldn't know that, and I wouldn't say that we had that much in right at the start either. I really wouldn't know that.

Q. I mean after the war.

A. I know, but I say for the first couple of years I was not connected with that end of the business and I couldn't tell you what we spent at that time.

Q. But since the last few years, that has been true?

A. That is right. I would say in the last four or five years it has been true.

Q. Do you know, Mr. Johnson, whether Admiral has advertised in any other place that its predecessor, Stewart-Warner, was first with the combination freezer-refrigerator?      A. No.

Q. That hasn't been the usual pitch, has it?

A. Well, what do you mean by that?

Q. Well, I mean, I find one example that I read to you on the record here. I wondered if that is a unique and isolated example?

A. Oh, I imagine there have been other times when that has been used. I couldn't tell you where or when.

(Deposition of Wallace C. Johnson.)

Q. Is that the general impression you had, that the Stewart-Warner was first with such a combination?

A. Well, the general impression, but I [1178] never——

Q. You never checked it?

A. Never checked it.

Q. Have you ever had anything to do with patent angles of the refrigeration business?

A. No, sir, I have not.

Q. Have you ever read a patent in the refrigeration field?      A. No, I haven't." [1179]

#### DEPOSITION OF EDMOND I. EGER

"Q. What is this booklet which has been marked Siragusa Exhibit 1, Mr. Eger, if you know?

A. I have seen it before. I have read it. I believe it is a brief history of the company.

Q. Do you know who wrote this book?

A. No, I really don't.

Q. Any idea when it was published?

A. I would have to guess about three years ago. Is there any date in there?

Q. Yes, sir, there is a date in the text which I will show you, if I find it. June 30, 1933. That is in the text. There is no date on the booklet itself that I am able to find. So I assume it was written after that, and that would bring it down to the last two years?      A. That is right.

Q. Was it published before you joined the company?      A. Yes.

(Deposition of Edmond I. Eger.)

Q. Is that the sort of publication that either of the agencies work on or would that be a house advertising department job?

A. It could be either."

"A. Our budget for this year for the appliance division will run around two million dollars. [1180]

Q. That is for all appliances?

A. That is for all appliances.

Q. Can you break it down for refrigeration?

A. Well, roughly I would say about a million and three-quarters, around there.

Q. For refrigerators? A. Yes.

Q. The balance for the other items?

A. Yes, the balance for the ranges and so on.

Q. \$1,750,000.00, is that right?

A. That is right.

Q. Is that further breakdownable as to the Dual-Temp and the conventional type?

A. No, sir.

Q. Is it your practice to advertise both types together or do you run separate ads on the two types?

A. We have run separate ads.

Q. Have you any general practice on that?

A. No.

Q. Just as the spirit moves you?

A. Well, I would hardly put it that way, but currently we are concentrating on the Dual-Temp."

"Q. You were aware back in those years 1945 to 1948, were you not, that Admiral had taken over



(Deposition of Edmond I. Eger.)

the business of Stewart-Warner [1181] on the Dual-Temp?      A. Yes, I was.

Q. Had you any familiarity with the prewar business of Stewart-Warner in Dual-Temp refrigerators?      A. No, sir.

Q. Did you in connection with your work in those years have any occasion to go into the prior advertising practices of Stewart-Warner in the Dual-Temp, as a successor to that business?

A. We studied the advertising that they had done in the past, yes.

Q. Can I show you, or I do show you about fourteen pages in the Stewart-Warner record, beginning specifically—I show you more than that. At page 2,087, and running through 2,114, which are largely a collection of Stewart-Warner advertising.”

“Q. Do you recognize any of those items, and if so, you can identify them by the page number, as items that came to your attention at that time.

A. What was the last page?

Mr. Byron: 2,114.

A. I don't recall ever seeing any of this.

Q. (By Mr. Cunningham): That is, your testimony is that you don't now recall ever seeing any of this? [1182]      A. That is correct.

Q. You don't wish to deny that you might not have seen one of them, do you?

A. It is possible that I did.

(Deposition of Edmond I. Eger.)

Q. You knew the trade-mark 'Dual-Temp' was assigned by Steward-Warner to Admiral along with the business, did you not?

A. Well, I assumed so. There wasn't any question about using it.

Q. Did you in your advertising or any publicity make reference, and I mean reference as a general rule, in the early days, to the fact that you were successors to that business of Stewart-Warner, and by you I mean Admiral Corporation?

A. My recollection would be to the contrary, that we diligently avoided any reference to Stewart-Warner.

Q. Is that confined to national advertising or is that general policy, that you avoided it?

A. No, I am talking about advertising.

Q. Or publicity material?

A. No, I am confining my remarks to advertising. When you say 'national,' I have in mind also newspaper advertising, circulars, whatever we were responsible for preparing.

Q. Or little publications like this book, Siragusa Exhibit 1?

A. I wouldn't put that in the category that I am referring [1183] to. Offhand, I would refer to that as a publicity release.

Q. Well, then, do you want to except publicity releases?           A. Yes.

Q. You didn't avoid reference to Stewart-Warner in your publicity releases?

A. I wouldn't know that. We were not responsi-

(Deposition of Edmond I. Eger.)

ble for the publicity releases. I want to make it clear, there was a different agency, Steve Hannigan, that handled publicity. We only handled advertising.

Q. So you might not know about that?

A. That is correct.

Q. Well, I don't want to misunderstand you. Was it a definite policy not to refer to Stewart-Warner——

A. In our advertising.

Q. ——as the predecessor of Admiral?

A. That is correct.

Q. Do you recall ever making any claims that Stewart-Warner was the first with a combination home freezer-refrigerator?

A. No.

Q. I quote from page 11 of Siragusa Exhibit 1:

'Admiral acquired the patents, tools, dies and engineering equipment for the Dual-Temp, the first and only genuine combination home freezer-refrigerator made at that time.'

The reference to 'then' is the early 1940's [1184] as I understand it.

Was that your understanding, if you had any understanding, as to who was first with a combination freezer-refrigerator?

A. I will answer it, yes.

Q. That is, that Stewart-Warner was the first?

A. That is correct, yes.

Q. Upon what do you believe that impression was based?

A. Either because I was told that or from the literature I did see.

(Deposition of Edmond I. Eger.)

Q. Have you seen similar statements to the one I quoted, similar in substance, I mean?

A. I believe so, in publicity releases.

Q. Can you recall any of them?

A. No, not specifically.

Q. But you think that claim has been made before?      A. I think so.

Q. Can you give me an approximate date of anything you recall making that claim?

A. No, I really can't.

Q. Could you relate it to that 1945-1948 period?

A. Well, that would be my assumption, that that would be when it would have been made." [1185]

## DEPOSITION OF EVANS T. MORTON

April 28, 1955

"Q. After you went with the development laboratory of Stewart-Warner did Stewart-Warner make any attempts to develop a moist cold two-temperature box?

A. The answer, I think, would be yes. I was hired specifically and told that was to be one of the major projects for that job.

Q. (By Mr. Cunningham): Did you devote a substantial part of your time from August, 1936, on to such development?

A. When you say 'substantial' that would mean more than half of my time, I would assume?

Q. Whatever it was, Mr. Morton.

(Deposition of Evans T. Morton.)

A. I would say a small part of my time was devoted to that.

Q. Can you give me some percentage figure? It is a guess, I realize.

A. Over that entire period I would say probably 20 or 25 per cent.

Q. I will show you a schematic drawing which appears on page 2,534, and is marked somebody's exhibit, I think it is Defendants' Exhibit 111.

Is that a correct diagrammatic showing of the Dual-Temp refrigerator put out commercially by Stewart-Warner? A. Yes.

Q. Would that be correct as to all models up until you left [1186] Stewart-Warner in 1944, or I guess it was 1943?

A. From a diagrammatic standpoint, yes.

Q. Well, it shows the refrigerator circuit correctly, does it not? A. Yes." [1187]

## DEPOSITION OF THEODORE K. QUINN

April 19, 1955

"Q. Have you had the temerity, Mr. Quinn, to publish any writings giving your qualification?

A. Yes, I left the General Electric Company in 1936, and afterwards published or wrote several books dealing with large organizations and economics generally, including one book entitled 'Giant Business Threat to Democracy'—

It was published by the Exposition Press in New York and carries copyright notice in 1953.



(Deposition of Theodore K. Quinn.)

Q. By the way, this wasn't published as a result of any conversations you and I had, was it, Mr. Quinn?      A. No, sir."

"Q. Is that the patent that covers the invention referred to at page 216 of your book?

A. Well, I cannot say that I examined the patent in connection with that particular statement. I simply reported in my book what was just general information and knowledge I thought.

Q. I want to be entirely clear on that, Mr. Quinn.

A. I didn't know that there would ever be any lawsuit about it.

Q. Perhaps you had better tell us in what connection you [1188] have seen this patent when you read it with respect to this book. It is my understanding that it was after you wrote the book; is that correct?

A. Well, as an executive in charge at that time, I looked over all the new developments and while I am not a technical man I had general information in regard to it as far back as that, but I also have seen it since then.

Q. Well, so far as you can tell, being a layman and not an expert, a patent lawyer, does that refer to what you meant by Moist Cold?

A. Oh, yes.

Q. I suppose this is subject to Mr. Byron's objection, but I happen to find in front of me a clipping from the New York Times under date of May 11, 1953. I don't know what page, but it is probably

(Deposition of Theodore K. Quinn.)

in the Book Review Section, reviewing Plaintiff's Quinn Exhibit 2.      A. Yes.

Mr. Cunningham: I ask that that be marked Plaintiff's Quinn Exhibit 3.

Q. Mr. Quinn, have you ever been called upon to testify in connection with any public issues and particularly in connection with any small business inquiries of the Government?"

"Q. Mr. Quinn, I have before me a publication entitled, 'I [1189] Quit Monster Business,' apparently written by you. I do not wish to offer it in evidence, but did you write this?      A. Yes.

Mr. Byron: I object, because it has no pertinency whatsoever. What Mr. Quinn decided to do, working for one corporation or quitting that corporation, has nothing to do with the question of infringement or validity of the patent.

Mr. Cunningham: I wish to quote a passage from this publication, on page 25——

Mr. Byron: Same objection.

Mr. Cunningham: ——as follows, 'The poor inventor can hardly afford to litigate at all, and usually feels forced to surrender. Only those who have the means can indulge as they do in the other patent abuses such as: Fencing, which consists of surrounding a legitimate patent with numerous additional inventions, anticipating all possible improvements.'

Mr. Byron: I object, for the same reason.

Q. (By Mr. Cunningham): Is that a correct

(Deposition of Theodore K. Quinn.)

definition according to your understanding of the term patent fencing?

A. That is my idea of it. I am conscious of being in a strange land now. We are in the presence of experts.

Mr. Cuningham (Continuing with quotation): —

Mr. Byron: Same objection.

Mr. Cuningham: —‘interference, a practice of [1190] nuisance applications to harass and delay the development of a competitive process; and litigation to benefit of monopolistic combination, which by bringing suits and appeals in many court circuits, may require an inventor to defend his rights at prohibitive expense.’

Does that correctly express your views?

Mr. Byron: Same objections.

A. Yes, sir.”

### Cross-Examination

By Mr. Byron:

“Q. There is a quotation on page 116 of your book, the book you wrote, ‘Giant Business Threat to Democracy’——

Mr. Cuningham: I hand it to you.

Mr. Byron: I don’t care to see it.

Q. And then you stated that Irving Potter, who invented the refrigerator in question, received little or nothing for his invention.

Mr. Cuningham: I object to that as being an incorrect quotation.

(Deposition of Theodore K. Quinn.)

Mr. Byron: You may quote it, if you desire. I am giving the sense of it.

Q. Did I give the sense of it?

Mr. Cuninghame: It is your examination.

Mr. Byron: All right, then don't interfere.

A. Except that you refer to it as a refrigerator, but I [1191] thought of it as a principle.

Mr. Cuninghame: That is the precise difference I had in mind.

Q. (By Mr. Byron): Well, in any event, you say, 'Who received little or nothing from his invention.' Now, what is the basis for that statement?

A. Just general information, and my whole statement there is as to general knowledge in the refrigeration industry.

Q. Where did you receive your knowledge on that point?

A. I suppose from many, many sources.

Q. Just name one source.

A. You mean, specifically, that he received nothing from it?

Mr. Byron: Yes.

A. Or a little from it?

Mr. Byron: Yes.

A. I think he told me that.

Q. You are certain of that?

A. Quite sure of that.

Q. When did he tell you that?

A. Oh, within the last five years. I tried to check all of those statements I made in my book as responsible authors try to do.

(Deposition of Theodore K. Quinn.)

Q. Well, in other words, you are taking his word for it, as his statement?

A. Yes, that and, as I say, being in the industry, which [1192] I was, you have an impression about what goes on, don't you know.

Q. There is talk, I know. But you say you know nothing about this industry since you left in January, 1936.

A. I wouldn't say I knew nothing about it, but I couldn't answer specifically about this.

Q. You know nothing about the General Electric machines?

A. No, I didn't say that. I couldn't identify a particular model."

"Q. You understand what I mean, don't you, when I am talking about this?

A. Well, I understood that you were charging me with absolving myself from all knowledge. I didn't mean to do that. I only mean to say with respect to that model that I couldn't identify it.

Q. What model, then, did the General Electric Company make after January, 1936?

A. Well, there again, they made various models, but from that point on, I don't know specifically.

Q. Well, then, you don't know the structure or operation of any of the General Electric refrigerators after you left?

A. Yes, substantially, that is right.

Q. Well, that is substantially what I said before.



(Deposition of Theodore K. Quinn.)

A. (Continued): I didn't so understand it. Perhaps it is [1193] my fault.

Q. What is the basis for your reaching your conclusion, if this is your conclusion, that large corporations have used the patent system, and that the individual inventor has no chance?

A. I have had a good deal of contact with inventors who have come to me with ideas while I was with the General Electric Company and afterwards, and I am always impressed—almost with a sense of pity—with their limited means, their devotion to an idea, to the exclusion sometimes of a source of livelihood for their families, and then I know, having been on the other side, what they have to deal with when they come to sell an idea, or a patent, to a large corporation. To them it may have been worth many, many years of devotion, but to the company who comes to buy them out, they very often will give the man \$1,000 just to get rid of him, if anything, and then if he attempts some other alternative, such as to launch a business, he usually has no idea of what is involved in the organization of the business, in the production of the product that he has in mind. He is just an all-around, in my experience and judgment, pitiful creature.

Q. Well, haven't you found it to be a fact that many of these men who came to you to submit ideas to General Electric Corporation really had little, if any, invention to suggest to you, in many instances? [1194]

(Deposition of Theodore K. Quinn.)

A. I think that is undoubtedly a number of them, the larger portion of them, have ideas that are not meritorious. But given a number, there is always a percentage of them, I find, who do have merit, and that you afterwards see adopted by some of these companies that will not pay for it in the beginning.

Q. Is that a practice at General Electric Company?

A. I don't want to charge General Electric Company with being any worse or any better than any other big corporation. I think there goes with size an impersonality, an inhumanity, if you please, that doesn't exist where men deal intimately and closer with each other as principals.

Q. Well, then, you mean, as a result of that, that there is a wrongful appropriation of inventions by the General Electric Company, inventions of others?

A. Anyone with large capital and market power is in a position to take advantage.

Q. I say, does the General Electric Company do that?

A. We made a practice of getting the most we could for the least money, and when we were dealing with a man who couldn't organize a business of his own, to make his product, he was almost at the end of his rope when he came with us and was glad—in many cases about which I am familiar—was glad to take a very small compensation.

Q. What was your full period of time with the General Electric [1195] at the time you were there?

(Deposition of Theodore K. Quinn.)

A. Well, I started with the General Electric Company—let us see, it was in 1912. I was there for 24 years.

Q. And had General Electric Company during that entire period maintained a large Patent Department? A. Yes.

Q. And what was the function of that Patent Department?

A. Well, as is all Patent Departments, to screen such patents as were presented to the Company, to work out and present on behalf of the Company, applications as a result of work that was done by men within the Company, and to function generally as the name suggests.

Q. And when inventions were submitted from the outside or the General Electric Company observed developments, they saw to it that they made a patent investigation to find out whether or not there would be infringements of patents, did they not? A. Oh, yes.

Q. As a matter of fact, General Electric has always maintained a large corps of patent searchers in Washington, isn't that correct?

A. I don't know how large the force is in Washington, but we were represented there.

Q. How many patent lawyers were there in the Patent Department of General Electric Company at the time you were a Vice-President [1196] in 1930—from 1930 to 1936?

A. I don't recall exactly, but I imagine there were twenty.

(Deposition of Theodore K. Quinn.)

Q. If I told you that there were fifty, would you be surprised at that number?

A. No, it could have been fifty, but I don't think so. I have been in the Department and looked them over. I don't think there were fifty.

Q. Did you know that this very same Potter and the General Electric Company had litigation with respect to his original patent?      A. No, sir.

Q. The reissue of which is now subject to this litigation?      A. I did not know."

### Redirect Examination

By Mr. Cuninghame:

"Q. Based on your experience as a merchandiser of refrigerators, would you say that a two-temperature box, such as that illustrated in the Potter patent, reissue patent in suit, would command a substantially higher price to the purchasing public than the ordinary conventional box without the moist cold feature?

A. Well, the moist cold had an undoubted appeal as evidenced by the fact that we made several rather futile attempts to achieve it through such mediums as these pans and hydrators, and also by the fact that it has since been very widely adopted [1197] and is now in quite general use. I think the answer is in the evidence of what has happened—that the moist cold refrigerator has become acceptable and is now very widely in use.

Q. Is it now a standard article?      A. Yes.



(Deposition of Theodore K. Quinn.)

Q. And so far as you know, is that standard article of commerce founded by the Potter organizations?

A. To the best of my knowledge, and I have so said and so written."

"Q. I call your attention to pages 16 and 17, either one or both of them, and ask you if you recognize that two-unit double-compartment box?

A. Oh, yes.

Q. Well, now, is that a product of the General Electric Company, to your knowledge?

A. Only as I see it announced here in this pamphlet.

Q. In about 1939?

A. The date here is 1939.

Q. Do you recall any earlier two-compartment box that was actually marketed by G.E.?

A. None except the one I mentioned a while ago, where we made a stab at it and abandoned it.

Q. That was a flop? A. Yes." [1198]

"Q. Can you give us any idea of what the ratio of cost to price would be with respect to these moist cold boxes which are now a standard article of commerce and the conventional dry cold box which is likewise a standard article of commerce?

A. I am afraid I don't know enough about that to give you an answer. I can tell you, generally, that the practice in the appliance business with respect to pricing is to multiply your factory costs by about two and one-half times, and I should as-



(Deposition of Theodore K. Quinn.)

sume that that same formula would apply to any product of any description. That is generally true.”

(Whereupon proceedings herein were adjourned to Monday, November 28, 1955.) [1199]

Monday, November 28, 1955, 11:00 A.M.

proceedings herein were resumed pursuant to adjournment, as follows:

The Court: We just contacted Mr. Price. He thought we were convening at 1:00 o'clock. This demonstrates how the absence of one juror can cause a lot of confusion to a lot of people. Be sure to remember the hours.

I think that this might be a good time to complete the record. Go ahead.

Mr. Cheatham: May the record show that your Honor ordered that Plaintiff's Exhibit 19 and all of the patents listed therein, 19-A to 19-II, are in evidence.

The Court: Yes, I think that's right. It may be admitted, Mr. Cheatham.

(List of patents, previously marked for identification, were received in evidence as Plaintiff's Exhibits 19-A to 19-II, inclusive.)

Mr. Cheatham: May the record also show that it has been agreed between counsel for the parties that the various minor errors may be corrected in the testimony of Mr. Parker, and I want particularly to show now that on page 836 the patent

number thereon should be 2,636,228 in both instances.

Also may the record show that it has been [1200] stipulated between counsel that various physical exhibits which are listed as being in evidence on various pages are not listed in the index and that that may be corrected?

Mr. Cuninghame: If your Honor please, that closes the plaintiff's prima facie case.

The Court: I think it's going to take about 15 minutes before Mr. Price is going to be here. I think under those circumstances it might be just as well if you would retire to the jury room where it is more comfortable for you, and we can take up some legal matters then.

Mr. Kolisch: Your Honor, I am wondering if you want at the commencement of the defendants' case for us to offer any of the exhibits which have not yet been received, defendants' exhibits which we are ready to offer now. Most of them have already been received.

The Court: Well, you can offer them. That would be a good idea, but I don't see why the jury has to be here while you are offering exhibits unless you want them here.

Mr. Kolisch: No.

The Court: All right. You may be excused.

(Whereupon the jury was excused and the following proceedings were had out of the presence of the jury:)

The Court: Go ahead and offer your exhibits.

In the first place, I think the record should show [1201] that the defendants have moved for a directed verdict on the grounds set forth in the written motion, which contains a file date of November 25th. At my suggestion the defendants have waived argument and I have denied the motion for a directed verdict because I assume that a similar motion will be made at the conclusion of all of the testimony.

Now, Mr. Kolisch, do you want to offer something?

Mr. Kolisch: Yes, your Honor. Defendants' Exhibit 110. These are all listed in the pretrial. Defendants' Exhibits 111, 112, 113, and 118.

Mr. Cuninghame: Now, if your Honor please, there is objection to some of those. There is objection to 110 on the ground that like other patents in evidence it is not prior art. There is objection to 111 on the ground that that is not even prior to the date of inventions that have been established in plaintiff's case. There is no objection to 112 and 113.

The Court: 112 and 113 may be admitted.

(The documents, previously marked for identification, were received in evidence as follows: G. A. Gase and E. A. Seymour patent, March 15, 1955, as Defendants' Exhibit 112 and F. W. Wolf patent, December 16, 1919, as Defendants' Exhibit 113.)

Mr. Cuninghame: On what—was 118 offered?

Mr. Ramsey: Yes. [1202]

Mr. Cuninghame: Let me see what it is. Oh, if your Honor please, 118 was objected to strenuously before, and that is the later 1940 patent of Mr. Potter. It has no connection with the case whatsoever or with the plaintiff—it is not just a patent, it's the whole file wrapper. October 29, 1940—it can have no possible bearing on any issue.

The Court: Well, Mr. Byron at that time said that the file wrapper showed some admissions against interests.

Mr. Cuninghame: Your Honor, I don't see how it is possible.

The Court: Well, I don't know either, but I haven't seen the file. I will have to take a look at it.

Mr. Cuninghame: Well, could we just mark it for identification and you reserve a ruling?

The Court: I have already done that. Nobody showed me the part that is alleged to contain the admissions. What portion of the file wrapper contains the admissions?

Mr. Ramsey: Well, this file wrapper is a patent which was filed within six months of the patent—of the granting of the original patent; that is, the patent that matured in the reissue patent. It contains very similar language in its claims and in its disclosure to the patent in suit, and there is an interpretation in that patent of what the patentee, Potter, contended for words such as “within” and “nonfrosting coils,” and a lot of the elements and the organizations that [1203] are the subject matter of the patent.



The Court: Is that what he himself contended?

Mr. Ramsey: He contended to the patent office in that regard.

Mr. Cuninghame: Your Honor, I deny that. I think it's a contention in argument by his attorneys. It's unfair to admit this sort of thing for another reason, your Honor: It brings in the arguments pro and con of the patent office at a wholly later date. It could have nothing to do with any issue in the case, prior art or subsequent art.

The Court: Well, if Potter is making certain contentions and he puts an interpretation on words which are involved in this litigation I think it's admissible. But I would like to look at the file wrapper myself. I want to check that file wrapper.

Mr. Cuninghame: I think Mr. Ramsey should point out the portions that your Honor asked him to.

The Court: All right. I wish he would.

Mr. Ramsey: Would you care to——

The Court: What about 110 and -11?

Mr. Ramsey: 110 is one of the file wrappers in this case, Lungard. It shows on the back of the patent as one of the patents relied on by the patent office itself as prior art.

Mr. Cuninghame: That is true. [1204]

The Court: Well, it's admissible. It may be admitted.

(Lungard file wrapper, previously marked for identification, was received in evidence as Defendants' Exhibit 110.)



The Court: What is 111?

Mr. Ramsey: 111 is the Gibson patent, the re-issue, 29,141, that was filed September 30th, 1930, the original of it was, and thus is prior in point of time to the filing date of the patent in suit.

Mr. Cunningham: It is not prior art, your Honor, and it is not prior in time to the invention date we have established.

The Court: What about that? Do you have to prove that Gibson was invented prior to the date of filing?

Mr. Ramsey: I think the presumption is that the filing date holds unless they can prove an earlier date. Whether they have or have not I don't know. That's only one of the purposes for this patent which shows the patent under which these defendants operate and under which they have a license.

The Court: All right. It will be admitted.

(Gibson Reissue Patent No. 29,141, September 30, 1930, previously marked for identification, was received in evidence as Defendants' Exhibit 111.)

Mr. Cunningham: May I get a little clarification? You say "under which the defendants operate." Now, is it the [1205] admission of the—Mr. Ramsey and the defendants here that the Gibson patent covers any of the accused structures?

Mr. Byron: No.

Mr. Cunningham: Well, then, how do you operate under a patent if you—if it doesn't correspond—

Mr. Ramsey: We secured a license on it.

Mr. Cuningham: All right. Your Honor, if they don't use that license on anything accused in this case I think it's wholly irrelevant, and for that reason I object to it.

The Court: All right. Your objection is noted. The exhibit is admitted.

Mr. Kolisch: There were two others, your Honor: 120-A and 120-B.

The Court: What are they?

Mr. Cuningham: If your Honor please, those are objected to.

The Court: I don't know what they are.

Mr. Kolisch: 120-A is a Potter trust agreement and 120-B is the Potter-Bronaugh letter.

The Court: Well, that goes to the question of title.

Mr. Cuningham: Title?

The Court: Isn't that right?

Mr. Ramsey: That is correct. I thought that the Court admitted them but the record does not show it.

Mr. Cuningham: No, your Honor, I thought the Court [1206] excluded them. They have nothing to do with legal title in this lawsuit as part of alleged clean hands. I have never been able to understand and certainly they are not competent. They haven't been proved in the case. They are not only irrelevant and immaterial but not proved, and I object to them.

Mr. Ramsey: If the Court please, the Court will remember that this went in with the Potter deposition and these are actual copies that Mr. Pot-

ter personally gave to counsel when his deposition was taken and testified that they are an outline of the plan under which the plaintiff corporation was formed, and upon which he operated.

Mr. Cuninghame: Now, if your Honor please, that is not my understanding. The documents have been in the defendants' possession since 1951 and the deposition that they are mentioning is the deposition in a wholly different lawsuit not between the same parties, in a suit in New York.

Mr. Ramsey: If the Court please——

The Court: I didn't understand it that way. We came across that testimony, I believe, and there was a question as to whether the trust agreement was actually signed and you contended that you knew of your own knowledge that they weren't signed.

Mr. Cuninghame: No, your Honor, I did not. I said that I had reason to believe that they weren't, and my position is [1207] that they haven't been proved to have been signed.

The Court: But the testimony of Mr. Potter was that this was the outline of the arrangement that they had with the trustees, is that correct?

Mr. Cuninghame: That is not my understanding, your Honor.

The Court: Well, let's read the portion of the transcript that says that.

Mr. Cuninghame: I don't know, I don't think it says it.

The Court: Is it the testimony in this case or in some other case?

Mr. Ramsey: Testimony in this case and you

will find it's already been written in. This subject came up and the Court will possibly remember that I offered these and I thought the record should indicate——

The Court: I thought I admitted them.

Mr. Ramsey: I did, too, but the record is silent.

The Court: All right. They may be admitted. Exception is allowed.

(The documents, previously marked for identification, were received in evidence as follows: Potter Trust Agreement, as Defendants' Exhibit 120-A, and Potter-Bronaugh letter as Defendants' Exhibit 120-B.)

The Court: Anything else? [1208]

Mr. Kolisch: I would like the clerk to check and see if the defendants now have offered and everything has been received in evidence with the exception of 103 and 103-A.

The Court: You want to do what?

Mr. Kolisch: I just want to see that we have everything in.

The Court: You check with the clerk.

We will take a short recess.

(Recess.) [1209]

The Court: Mr. Ramsey.

Mr. Ramsey: Call Mr. Muffy.

GLENN MUFFLY

a witness produced in behalf of Defendants, having been first duly sworn by the Court was examined and testified as follows:

Direct Examination

By Mr. Ramsey:

Q. Your name is Glenn Muffly?

A. Right.

Q. You told the Reporter that you——

Mr. Cuningham: If your Honor please, we, of course, have the hope of being able to admit Mr. Muffly's qualifications to a limited extent as an expert in his field. May I examine briefly on voir dire before doing so?

The Court: You are not satisfied that he has the qualifications?

Mr. Cuningham: Well, sir, I would like, for the purposes of the type of admissions—I think it will be a limited admission—I would like to have him answer two or three questions very briefly.

The Court: I think that under the circumstances—I do not know what field they want to qualify him in as an expert—that we ought to let him go ahead and first qualify him, and if at any time you are satisfied they will stop. [1210]

Mr. Cuningham: Your Honor, my purpose was to save time and to find out about certain matters that I am concerned to know about before making such a sweeping admission.

Mr. Byron: Let us not worry about saving the



(Testimony of Glenn Muffly.)

time in defendants' case. The plaintiff has taken a lot of time, and we will take less time.

Mr. Cuningham: Your Honor, I wonder if I might ask him, ask Mr. Muffly, for example, whether he is admitted in the Patent Office, whether he is a patent lawyer or a patent agent.

The Court: You will have all the opportunities in the world to interrogate him on the voir dire.

Mr. Ramsey: We will be very glad to stipulate that he is not and also stipulate he is not a lawyer, does not practice law. Is there anything else?

Mr. Cuningham: Yes, I would like to know whether, with the exception of the one case that I know about, he has testified in other patent suits on refrigeration.

The Court: What is the situation about that?

Mr. Cuningham: I would like to have Mr. Muffly answer. I think that would be the quickest way.

The Court: Have you testified in other cases?

The Witness: I have.

Q. (By Mr. Cuningham): For what clients, Mr. Muffly, what [1211] cases?

The Court: Well, Mr. Cuningham, you will have an opportunity to interrogate this witness. Please be seated. Go ahead and qualify him any way you want, Mr. Ramsey, unless Mr. Cuningham is willing to admit his qualifications.

Mr. Cuningham: Your Honor, I will admit that he is, as testified, a refrigeration engineer, but be-

(Testimony of Glenn Muffly.)

yond that I do not feel that I can admit his qualifications.

The Court: I am the one to make that determination as to whether he is qualified as an expert or not. I do not know the man's qualifications. I have told you before that when Mr. Byron admitted the qualifications of Mr. Parker that was all. Then there was no question about it. Now there seems to be a question, and in view of that fact we will permit Mr. Ramsey to make his own case.

Q. (By Mr. Ramsey): Will you tell me your occupation?

A. Consulting engineer in refrigeration and particularly electrical refrigeration.

Mr. Byron: Now, Mr. Muffly, you and I mumble to each other sometimes, but please speak up so that everybody can hear you.

The Witness: I will try to keep my voice up.

Q. (By Mr. Ramsey): Where do you have your office?

A. In Springfield, Ohio.

Q. That is the same place that you live? [1212]

A. Yes.

Q. What is your first experience in the field of household refrigeration?

A. First actual experience started in 1925.

Q. Would you please state with whom?

A. With the Copeland Products, Inc., a newly organized company that has just purchased the business of Ed Copeland who was making electric refrigerators in Flint, Michigan, and the plant was being moved to Detroit.

(Testimony of Glenn Muffly.)

Q. Are you familiar with the practical household refrigeration art as it existed at that time?

A. Very familiar with it.

Q. Would you please explain that to the jury, the state—state the state of that art, practical art.

Mr. Cuningham: Objection, your Honor.

The Court: Are you a graduate of any college?

The Witness: I am—I have attended a couple engineering colleges. I have no degrees, no honorary degrees even.

The Court: How many years did you go to engineering school, and which ones?

The Witness: I went to Iowa State College and to Armour Institute for a couple of years. I am mostly self-educated, rather a practical fellow than theoretical.

The Court: How long have you been in the field of refrigeration? [1213]

The Witness: Thirty years.

The Court: Since 1925?      A. Since 1925.

The Court: Tell us the jobs that you have held and what you have done. Go ahead, Mr. Ramsey, qualify this witness. You have done it.

Mr. Ramsey: If the Court please, I was going to develop through this witness the state of the art from 1925, 1930, not qualify him as a patent expert, although I will because that will later develop.

The Court: Well, I think that the witness' qualifications should be established before any questions are propounded to him.

Mr. Ramsey: Very well.

(Testimony of Glenn Muffly.)

Q. In connection with your profession what societies do you belong to, Mr. Muffly?

A. I belong to the American Society of Refrigerating Engineers, the National Association of Professional Engineers, to the Ohio Society of Professional Engineers, to the Engineers Club of Dayton, to the Engineers Club of Springfield, to the Springfield Section of the Ohio Society, and have in the past belonged to other societies; for instance, the Society of Automotive Engineers I have belonged to for many years prior to my entry into refrigeration and overlapping with it some ten or fifteen years. [1214]

Q. Have you held offices in those societies or any of them?

A. I was national president of the American Society of Refrigerating Engineers for the year 1932.

Q. Are you a professional engineer so qualified in the State of Ohio?

A. Yes, I am a registered professional engineer in the State of Ohio.

Q. In connection with your profession in Springfield, Ohio, do you have any connection with patents?

A. Yes, a great deal.

Q. Would you please state what sort of files you keep?

A. I started compiling records of patents first for my own benefit, taking out patents, and this grew into quite an elaborate field, starting in 1929-30, and this field has grown now to a point that it

(Testimony of Glenn Muffly.)

represents a large part of my work, and I have what is generally recognized as the most complete cross-index file of refrigeration patents in the country.

Q. Will you state how many patents are contained therein for reference?

A. Something over a hundred thousand.

Q. Are those United States patents?

A. Most all United States patents; a few foreign patents.

Q. In connection with your work, who are your clients? [1215]

A. My clients originally were annual retainer clients I worked for regularly. At the present time I am only retained on special advance studies so that the list of clients is not constant from month to month. I have served about 50 or 60 different companies including most of the large companies. It is easier to say whom I have not served. I have not served the large electric companies of General Electric or Westinghouse.

Q. Is your practice limited to refrigeration?

A. Yes, my consulting work is.

Mr. Cuningham: If your Honor please, I do not think that is responsive, whom he has served. I would like to know what clients he now has. That is the question.

The Court: What clients have you served within the past two years?

The Witness: The parties here.

The Court: Admiral and Amana?



(Testimony of Glenn Muffly.)

The Witness: Yes.

Mr. Cuninghame: This is just within the last two years, or how long have you served them, each of them?

The Court: Mr. Cuninghame, why don't you wait until this witness has testified, please. You are going to have all the opportunity to interrogate him, but I think he ought to be able to answer the questions at least that I ask him.

The Witness: A part of this service is to [1216] companies who are licensed under some patents of mine, and that would include Seeger Corporation.

The Court: What do they manufacture?

The Witness: Seeger Company is a large manufacturer of refrigerators. They manufacture the Sears Roebuck refrigerator; the Frigidaire Division of General Motors; some companies that make parts of refrigerating equipment; the Hoover Company who are not manufacturers of refrigeration but are much interested in it. They are the vacuum sweeper manufacturers.

Q. (By Mr. Ramsey): Are those typical of your clients?

The Witness: That is typical of the——

Q. About how many patents, did I ask you about how many patents are reflected in your files?

A. About a hundred thousand.

The Court: Are they all refrigeration patents?

The Witness: No, not all, but predominantly refrigeration.

The Court: Over half of them?

(Testimony of Glenn Muffly.)

The Witness: Oh, 90 per cent, I would say.

Q. (By Mr. Ramsey): What is the remaining 10 per cent?

A. They are electric appliances, largely, and a few in the aircraft field, but they are mostly electric appliances, home appliances.

Q. Do they or do they not relate to, in some fashion, refrigeration? [1217]

A. Yes, they are other appliances that are commonly manufactured by the same companies that manufacture electric refrigerators.

Q. In connection with your work, do you have an opportunity to study patents relating to refrigeration?

A. Yes, my work has shifted in that direction in recent years.

Q. Do you understand claims of patents?

A. Yes.

Q. Do you analyze claims and apply them to other patents and to structures? A. Yes.

Q. Have you secured any patents in the refrigeration art? A. Yes, a great many.

Q. Do you or do you not write your own specifications before presenting them to your attorney for approval and criticism?

A. I write them myself, but we do not stop there. I give it to the attorney to work over and offer his suggestions.

Q. Do you draft your own claims for approval and criticism of your own attorney?

(Testimony of Glenn Muffly.)

A. Yes, I draft the claims and consider my attorney's suggestions finally, based on what we shall file.

Q. As I understand your testimony, you are not an attorney? A. I am not an attorney. [1218]

Q. In making up your cross-file and references therefor, do you read the claims?

A. Yes, I look at every patent before it goes into the file. [1219]

Q. (By Mr. Ramsey): Do you discuss claims with regard to your own application with examiners in the United States Patent Office?

A. Yes. I often visit the patent office to——

Q. Are you familiar with the patents in the United States Patent Office with any of the refrigerator art? A. Yes.

Q. Are you familiar with the classification of the patents in the United States Patent Office in the refrigeration art?

A. Yes. I have a copy of it in my own office as applied to refrigeration, but my own file—my own classification is the one I use for reference.

Q. I believe that you stated you are consulted by manufacturers in refrigeration art and their attorneys? A. Yes.

Q. And in connection with that work does your work entail the presence or absence of elements in combination claims? A. Yes. I——

Q. Are you familiar with file wrappers——

A. Yes.

Q. ——of the United States Patents?

(Testimony of Glenn Muffly.)

A. Yes.

Q. Are you familiar with the reference cited in the file wrappers?      A. Yes. [1220]

Q. Are you familiar with the theory of refrigeration?      A. Yes.

Q. In 1925 what position did you hold with Copeland?

A. I came to Copeland from the automotive industry and was a special representative of the president of the company with the general job of helping to get the plant going.

Q. What position did you thereafter hold with Copeland?

A. I was very soon after that, after I organized the planning department of the plant, I went into engineering work to develop a new refrigerator.

Q. What position did you hold?

A. Well, I had no title at that time. I was merely development engineer, working on this job with no title. I became——

Q. Did you later acquire a title?

A. I became chief engineer within a few months.

Q. And what year was that?

A. That was in the year '26. I started in '25, late in the summer or early in the fall, and in '26, along the middle or the latter part of the year '26, I became a chief engineer of Copeland.

Mr. Ramsey: I submit to the Court Mr. Muffly's qualifications not only in the refrigeration art but also in the patent field as a patent expert.



(Testimony of Glenn Muffly.)

Mr. Cuningham: If your Honor please, may I ask him one question? [1221]

The Court: Go ahead.

Mr. Cuningham: Isn't it true, Mr. Muffly, this elaborate file that you have of 100,000 patents is used primarily by you on requests for patent searches of the prior art?

A. That's one of the main uses of it, yes.

Mr. Cuningham: Is that not the main use?

A. Originally it was just for my own use but now it is searches, and those searches are, of course, of prior art.

Mr. Cuningham: Now, for how many years has that been true, would you estimate?

A. When I started making such searches?

Mr. Cuningham: Yes; using your own file.

A. This has been a gradual shift from my work as consulting engineer to the work of patent expert and making these searches. The main part of that has come in the last 15 years.

Mr. Cuningham: Now, the searches are mostly the test of validity or the scope of an issued patent, are they not?

A. I do not pass on the validity of patents.

Mr. Cuningham: Well——

A. I merely make searches to see if these things are disclosed in the prior art. It is up to the client then to decide if he wants to negotiate or what he wants to do.

Mr. Cuningham: That's the principal part of this search work, is that correct?



(Testimony of Glenn Muffly.)

A. Oh, I would say the principal part concerns the manufacturer's [1222] plans to produce some new model in the future and I am working on things that the public won't see for two to five years—and make searches for the benefit of the manufacturer who is planning such things.

Mr. Cuningham: Well, do these remarks apply to your work for Amana in this case?

A. I have done such work for Amana. Right now it is just in connection with this case.

Mr. Cuningham: And Admiral, too?

A. Yes; and Admiral.

Mr. Cuningham: How long have you been retained by either or both of those, approximately?

A. Well, was first retained by each of them about the time they started in refrigeration, and it's been not on an annual retainer, as I said, but now and then. I have done work for Admiral maybe once or twice a year throughout that time and I was retained by Admdiral on an annual basis at the start when they were planning to get into the business.

Mr. Cuningham: What year was that?

A. I believe that was '44. I would have to——

Mr. Cuningham: Now, could you tell us a little bit about Amana when you were first retained, if you were, by them?

A. That was later, I believe. It was about the time that they brought out or contemplated bringing out a household [1223] refrigerator. They had previously built only freezers. And when they

(Testimony of Glenn Muffly.)

brought out a household refrigerator they consulted me on that.

Mr. Cuningham: About what year was that, if you recall?

A. I wouldn't be sure of that.

Mr. Cuningham: Well, as close as you can guess. It's not a question of being precisely accurate, but within a year or two.

A. Well, it was between '45 and '50; in there.

Mr. Cuningham: It was later than Admiral?

A. Yes, I think it was later than Admiral.

The Court: Mr. Cuningham——

Mr. Cuningham: Thank you.

The Court. ——this is not going to the man's qualifications. Are you satisfied with his qualifications now?

Mr. Cuningham: Not, your Honor, as a patent expert. I think as a refrigeration engineer, yes, but certainly not as a patent expert. He has not admitted and he is not recognized in any of the—in-  
cidentally, I noticed we are brothers in the Ohio society. That hasn't anything to do with engineering?

A. The Society of Ohio—Ohio Society of Professional Engineers? No, I am not a member of that.

Mr. Cuningham: You are not a member?

A. I mentioned that. I said the Ohio Society of Professional [1224] Engineers.

Mr. Cuningham: No. I thought you said we were fraternity brothers.

A. No, sir; I am sorry we are not.

(Testimony of Glenn Muffly.)

The Court: Do you advise the clients concerning the reach and scope of patents?

A. Yes. It's usually considering a design that they have and they consider producing this, and I merely produce, dig up for them and list certain patents, suggesting they look at this and that, and point out the ones that they should consider. Usually I give them quite a long list of patents with stars marking a dozen or two, and maybe emphasize by putting two stars on one I think they should study carefully. Sometimes a client negotiates a license or buys the patent or decides not to do it.

The Court: And what do you do besides giving them these references?

A. That's all. I help them sometimes with suggestions on design. But in recent years——

The Court: Do I understand that your main function is to design refrigerators that will be produced in two and three years by the big companies?

A. That's the general idea. I am working on things in the future and on my own inventions and patents, too.

The Court: And in that connection must you know the [1225] state of the art?

A. Oh, yes. Yes.

The Court: And must you also know what has been disclosed in prior patents?

A. Oh, yes. Yes, that's important.

The Court: And you give that type of advice to various refrigerator companies?

(Testimony of Glenn Muffly.)

A. Yes. Yes. But never legal advice because I am not——

Mr. Cuningham: We will admit Mr. Muffly does not practice law without a license—or patent law.

The Witness: No.

Mr. Cuningham: These questions are passed on by the lawyers, the patent people who are qualified, his clients, the scope of a patent, the validity.

The Court: What do you want to qualify Mr. Muffly as, a refrigeration expert and as a man who knows the state of the art at various times?

Mr. Ramsey: As a patent expert. As a refrigeration expert and as a patent expert.

Mr. Cuningham: That is not admitted. As a refrigeration expert, yes; not as a patent expert.

The Court: In connection with what? Do you want him to do what as a patent expert?

Mr. Ramsey: I believe that an expert occupies a little different position than a lawyer. We had in this court one [1226] case where a man is a lawyer and we admitted his qualifications as a patent expert. As I understand it, a patent expert is able to read patents, explain their theory and operation, the state of the prior art, the presence or absence of elements in claims, the meaning of elements as disclosed or not disclosed in the specification, but reach no legal conclusions.

Mr. Cuningham: Now, if your Honor please, I think the construction of the patent is probably that of the lawyer and probably that of the Court and not of——



(Testimony of Glenn Muffly.)

The Court: I assume, Mr. Cuningham, that a great portion of the people who are authorized to practice before the patent office are not lawyers. They are patent agents.

Mr. Cuningham: Now, if your Honor please, I think that's not correct, as I understand it.

The Court: Well, I said many men who are qualified to practice before the patent office are not lawyers.

Mr. Cuningham: Yes, your Honor. But this is not one of them.

The Court: I am going to permit Mr. Muffly to testify as an expert. If it should develop at a later time that he is not as well-qualified as his statement seems to indicate, I will change my ruling. But as of this time I think he is qualified.

Mr. Ramsey: Thank you. [1227]

Q. Mr. Muffly, we were chronologically going through your experience in the field of household refrigeration. Without repeating yourself, you were discussing your employment by Copeland Products, Inc., during the years 1925 to 1929, inclusive?

A. Right.

Q. At that time were you familiar with the practical art; that is, the state of the household refrigeration art in 1925?

A. Yes. I had been watching that industry for some 10 or 15 years, hoping it would become a production job as we in the automotive industry speak.



(Testimony of Glenn Muffly.)

Q. What is a "production job" as you use the word?

A. A thing is not in production unless you make a hundred or a few hundred a day or put it on something resembling a production line, like we built automobiles and like I had built automobiles up to 1925.

Q. Might I qualify on that? How long were you interested in the automotive and engine field and things relating to automobiles prior to 1925?

A. Well, starting in 1906 I had a job as assistant chief engineer of an automobile manufacturer, remained in that industry and finished——

Q. Well, I don't want to develop it. I only want you to explain what production problems you were referring to in the refrigeration field. [1228]

A. Oh, well, production covers a lot of things. It's the synchronizing of materials and the planning of plants and the equipment of machine tools and the bringing of thousands——

Mr. Ramsey: Wait just a moment until the siren quits.

The Court: I suggest that we confine our activities to the refrigeration field. I am not really interested and I don't think the jury is in how expert he is in the field of automotive engineering or production lines. We have got a problem, and since the beginning of this case I have been trying to hold all the attorneys down to the problem with which we are confronted.

Now, Mr. Muffly has been qualified as an expert

(Testimony of Glenn Muffly.)

in the refrigeration field. Ask him some questions about the refrigeration field. Let's get down to business.

Mr. Ramsey: These were only preparatory questions as to the state of the art in '25.

The Court: Ask him the questions.

Mr. Ramsey: Thank you.

Q. How many manufacturers were in production of household refrigeration in 1925, generally speaking?

A. There were only a couple or three that could be called in production. There was Frigidaire and Kelvinator and possibly Servel who had built three or four thousand machines.

Q. Now, what was the state of the household refrigeration in 1925 in gross annual figures? [1229]

A. That year the total production of the industry was something like 75,000 units. They were not necessarily refrigerators but systems that were installed in iceboxes and cabinets that they bought separately sometimes?

Q. Was this or was this not the time of conversion from putting mechanical refrigeration mechanism into iceboxes?

Mr. Cunningham: Objection, your Honor.

Mr. Ramsey: Is that what you were testifying to?

The Court: Objection sustained. This is your witness. You can't lead the witness.

Q. (By Mr. Ramsey): Well, will you please state what refrigeration systems are?

(Testimony of Glenn Muffly.)

A. Yes. The refrigeration system is the condensing unit, the low side, that's the brine tank, evaporator, cooling coil, we have been calling it various names here, and the necessary tubing, the thermostat to control it, and expansion valve to regulate the flow. Those were manufactured and shipped and installed in the field by servicemen. At that time that Copeland was being moved from Flint to Detroit and I started work with that organization, that new organization that had just bought it, there was no cabinet plant in connection with the Copeland in Detroit. There was not a cabinet plant in connection with the new one we were starting in Detroit.

We made the systems and bought the cabinets and [1230] we were just in the throes of putting this thing on the line or on the road, as you might say, getting assembly system together so we could build self-contained refrigerators, cabinet and all, and ship them out in one piece.

Q. So that we understand each other, you used the word "systems" as the refrigeration mechanism not within a cabinet and a "refrigerator" as a self-contained unit, is that correct?

A. Yes. A refrigerator might be merely a cabinet. But as we speak of an electric refrigerator, it is a cabinet and a system and self-contained.

Q. Yes. At that time what percentage of the industry was developing electric or mechanical refrigerators; that is, self-contained units?

A. A very small number of the companies that were trying to get started to make electric refrig-

(Testimony of Glenn Muffly.)

eration had any cabinet facilities. Only Frigidaire, Kelvinator, and Servel of that group.

Q. Now, in connection with your work with Copeland, what did you do with regard to building up electric refrigerators; that is, self-contained units?

A. Yes. One of my first assignments was to look at the refrigerator factories to select one that could make our cabinets, possibly that this company might acquire the company. I made quite an extended trip, came back to Detroit——

Mr. Byron: I think, Mr. Muffly, you can be much briefer [1231] on this. Don't give us a long story; just answer the question.

Mr. Cuninghame: It seems to me one lawyer at a time——

Mr. Byron: All right. I will observe it.

The Court: All right.

The Witness: And we arranged to have cabinets made in Detroit.

Q. (By Mr. Ramsey): Were there any problems involved in question of cost in the refrigeration systems in putting them into self-contained units?

A. Oh, there was a great deal of work involved there because the first systems that were sold were very expensive and no one was making suitable cabinets, and there was a lot of work to be done there and the costs were way out of line, and that was where our automobile crowd came in to cut



(Testimony of Glenn Muffly.)

out some of the costs and get the thing down to a production basis.

Q. Now, discuss it in portion of size; that is, the size of the refrigeration systems.

Mr. Cuningham: Objection, your Honor. I don't know what he means by "it," discuss "it."

The Court: Are you talking about the size of the refrigeration systems?

Mr. Ramsey: Yes.

The Court: All right. Do you know what he is talking about, Mr. Muffly? [1232]

The Witness: Yes, I know what he is talking about.

The Court: Go ahead.

The Witness: The refrigeration industry, of course, had been built up——

Mr. Cuningham: Your Honor, I object. Let's have an answer to the question, "the size of the systems."

The Court: All right. Go ahead.

The Witness: ——by making large-size ammonia compressors and the refrigeration art started in the large machine and grew into the smaller field. Early in this century they were making small machines two or three horsepower or five horsepower. They thought that was very small. By the time I entered the household refrigerator field quarter horsepower was a small machine and still is a small machine, somewhat smaller than that in the household refrigerator usually.

Q. (By Mr. Ramsey): Now, discuss the prob-



(Testimony of Glenn Muffly.)

lem at the time that you entered the field with regard to the service life of such equipment.

A. Of household?

Q. In the household refrigerator field service life.

The Court: Service life.

Mr. Ramsey: Service life, yes.

The Witness: Service problems?

Q. Service problems.

A. The early refrigerators had quite a lot of trouble with [1233] shaft seals and belts, and they were always losing their gas. The serviceman had to go out and put in some more refrigerant. Service was a serious problem. At that time most of the refrigerators were of the open type belt-drive, with the trend soon developed in the direction of sealed units, which put the motor and compressor inside of the sealed housing and got rid of some service problems.

Q. Was there quite a bit of development prior to that time in the field of commercial refrigeration?

A. Yes. The commercial refrigeration is that intermediate step between the big, old, cold-storage and ice plants and the electric refrigerator of today. The first electric refrigerators were commercial machines. They went into butcher shops and florists and they became meat counters and ice cream cabinets and soda fountains and cooling systems of various types.

The bulk of the production before household refrigerators got under way was in the intermediate commercial field of small machines cooling such

(Testimony of Glenn Muffly.)

things as ice cream cabinets, soda fountains, meat counters, and commercial cabinets, some of them with front doors; just large refrigerators, some of them multiple-compartment refrigerators such as a meat counter that has, say, a glass top and sliding doors.

Mr. Cuninghame: If your Honor please, I think the question has been answered. I object to any further answer. [1234]

The Court: Well, I think, Mr. Muffly, that all of the attorneys have joined in asking you to make your answers a little more concise and to the point and I think, Mr. Ramsey, that your question should be more direct. You ask a witness to discuss something and the witness doesn't know the outer limits of what he is supposed to discuss. So please ask him specific questions. [1235]

Mr. Ramsey: Thank you; I will try to do that.

Q. You spoke of counters and display cases. Were those in single compartment or multiple compartment?

A. Both were made, both types.

Q. Will you describe them, please?

Mr. Cuninghame: Oh, if your Honor please, I object. I think he ought to be more specific than that.

The Court: I think it is specific enough; otherwise, it would be leading, so answer the question.

The Witness: The single ones were usually a counter showcase height, say four feet or so, and the upper part of it would have a glass front, prob-

(Testimony of Glenn Muffly.)

ably inclined, with sliding doors. That would have a tray or pan on which the product was set, and below that were the coils, cooling coils, the evaporator, and sometimes coils at the peak where the inclined front and the back and the top meet.

In the lower compartment, sometimes refrigerated and sometimes not, sometimes it was refrigerated to a lower temperature than the upper compartment, and one end would be separated off and cooled to a low temperature, and the other end of the lower space would be used for the condensing unit, the machinery compartment.

Q. Do I understand that is a multi-compartment, multi-temperature? A. Yes. [1236]

Q. Would you indicate the range of the temperatures in the two compartments?

A. The upper compartment would be anything from 35 to 50, depending on the product that was to be stored there, and the lower compartment would be below that and sometimes as low as 20 above, or if they stored ice cream it would go to zero or a little below.

Q. What sort of products were kept in the cooler of those two compartments, for example?

A. Well, ice cream was one that required a low temperature.

Q. Now what is the warmer of the two?

A. That would be meats that were not frozen. It would be general produce. The meats occupied an important position because they did not always refrigerate the leafy vegetables.

(Testimony of Glenn Muffly.)

Q. Was any of it made to control humidity, in most cases?

A. Yes, in the case of leafy vegetables it was important to have high humidity in that warmer compartment.

Q. In the state of the art at that time, and discussing now "know-how," do you know what the technical knowledge of the art was at that time?

A. Yes.

Q. What was the condition of that technical art with regard to the maintenance of temperatures?

Mr. Cuningham: Objection.

The Court: On what basis? [1237]

Mr. Cuningham: Your Honor, what was the nature of the technical art at that time, on the basis that it is too general, impossible for any individual to answer, so far as I know. I do not think Mr. Muffly is that omnipotent.

The Court: Are you objecting that they did not know as to the publicly-known state of the art?

Mr. Cuningham: Oh, no, sir; not at all. That never had occurred to me.

The Court: Well, as I understand it, Mr. Muffly has been qualified as an expert. He collects all these patents. He was in the field, and you are now talking about the year 1925, are you not?

Mr. Ramsey: That is correct.

The Court: That was the year he got into the field?

Mr. Ramsey: That is correct.

The Court: He has testified that for some time prior to that year he made an examination of the



(Testimony of Glenn Muffly.)

field to determine whether production lines could be installed.

Mr. Ramsey: That is correct.

The Court: I think that the witness can answer the question.

Mr. Cuninghame: May we have the question?

(Pending question read.)

The Witness: There had been thermostats of many types in existence for many years. There were many to select from. [1238] They were too expensive. There were plenty of them.

Q. (By Mr. Ramsey): The question is the maintenance of temperatures.

A. Well, a thermostat is a device which stops and starts or turns it off and on and controls your temperature so that refrigerating systems had been controlled by thermostats for twenty years prior to my entry into the art.

Q. Is there any limit as to what range those thermostats could be set for?

A. No, I have had thermostats 40 below zero and hundreds of degrees above zero.

Q. Now, speaking of maintenance of temperatures in the refrigeration art, did the refrigeration art have the know-how at that stage, in 1925, to maintain temperatures?

Mr. Cuninghame: Your Honor, objected to as calling for a conclusion.

The Court: He is an expert. That is the exception. He may ask the question. Go ahead.



(Testimony of Glenn Muffly.)

The Witness: I want to add a little to the question.

Mr. Cuningham: Objection.

The Court: Do not add anything to the question.

Mr. Ramsey: Would you like to have the question read?

A. The point is, it sounds too much like the one before. You are asking me about control of temperature.

Q. Yes. [1239]

Mr. Cuningham: May we have it read?

The Court: Are you not thinking of humid temperature, Mr. Ramsey?

Mr. Ramsey: Of what, your Honor?

The Court: You had talked about humidity, and then you went to control of temperatures without permitting the witness to answer the question before. Did you intend to do that?

Mr. Ramsey: Strike the question and ask with regard to combination, then, of the humidity and temperature.

The Witness: Oh, yes, yes; both were under control, and I would date that from the time that Willis Carrier took out his first patents, some of his first patents on humidity and temperature control which were in about 1910 to 1912.

Q. (By Mr. Cunningham): Are those refrigeration, the Carrier patents?

The Witness: Air conditioning.

Mr. Cuningham: Air conditioning. I move to strike as not responsive.

The Court: The motion will be allowed. This

(Testimony of Glenn Muffly.)

testimony may be admissable, but it not responsive.

Q. (By Mr. Ramsey): Then may I ask before the Court rules, are the air conditioning arts and refrigeration arts development arts?

A. Very close; they are inseparable.

The Court: Do they operate on the same [1240] theory?

The Witness: Yes.

Mr. Cuningham: Your Honor, I think we are now in the field of air conditioning. They are totally separate. This is not the same art as the refrigeration art.

Mr. Ramsey: The witness has testified to the contrary, Mr. Cuningham.

The Court: I think that is true. The motion will be disallowed. Go ahead.

Q. (By Mr. Ramsey): Now, considering that as the status of the practical art, are you familiar with the patent art as it existed in 1925?

A. Yes.

Q. Is that through this very elaborate system of cross-references that you maintain?

A. Both that and my personal experience in the use of it.

Q. You mentioned a number of about a hundred thousand patents in your present file, or upwards of that. What percentage of those patents would have been issued prior to 1925?

A. Less than half prior to 1925; probably half prior to 1930, in 1929 or '30.

Q. Something less than half?

(Testimony of Glenn Muffly.)

A. Something less than half prior to 1925, yes.

Q. Have you made an examination into the patent art to determine whether or not combined freezers and refrigerators [1241] were old in the patent art? A. They were.

Q. Co-counsel has suggested that that might not be a clear definition or question, and what I meant to ask you, Mr. Muffly, were household refrigerators having the freezing compartment and the cooling refrigerant compartment old in the art in 1925 as shown in these patents? A. Yes.

The Court: This is a good time to stop. Ladies and gentlemen, we are going to give you an hour and a half for lunch today. We will start in at 2:00 o'clock, and then we will go to about 4:30. You are now excused until 2:00 o'clock.

(Thereupon the jury retired for the noon recess at 12:30 o'clock, and the following proceedings were had after the jury had retired:)

The Court: Mr. Muffly, I know that you are a man of great experience and have had a lot of different experiences, and you can tell us a lot of interesting things, but we are here involved in a specific problem, and I wish that you would confine your answers to the questions that are propounded to you.

I think this remark I am making to you is particularly apropos to the questions Mr. Cuninghame might ask you. [1242] When Mr. Cuninghame asks a question, answer his question, and the same thing

(Testimony of Glenn Muffly.)

is true with Mr. Ramsey, although I do suggest, Mr. Ramsey, that you do not ask these shotgun questions. They are the type of questions that are difficult for most witnesses, particularly Mr. Muffly with his wealth of experience, so confine it to the questions you wish to ask.

Mr. Ramsey: Thank you, your Honor.

(Thereupon the trial was recessed until 2:00 o'clock p.m. of the same day.) [1243]

### Afternoon Session

(At 2:00 o'clock p.m., the trial herein was resumed, pursuant to recess, and the following proceedings were had herein:)

### GLENN MUFFLY

thereupon resumed the stand as a witness in behalf of Defendants and was further examined and testified as follows:

### Direct Examination

(Continued)

By Mr. Ramsey:

Q. At the noon recess we were talking about the structure of these display cases that you say that were prior to 1925. Do you remember the details of those cases? A. In general.

Q. May I ask you whether—consider the following items. Were they inclosed in the cabinet?

A. Yes.

(Testimony of Glenn Muffly.)

Q. Did it have a cooling compartment?

A. Yes.

Q. Did it have a freezing compartment?

A. Yes.

Q. Did it have an insulation between the freezing and the cooling compartments? A. Yes.

Q. Did it have air in the cooling [1244] compartment? A. Yes.

Q. Was that air held at an average stable temperature, held at about 40 degrees Fahrenheit?

A. Yes.

Q. Held with a humidity relative value of at least 132 degrees F.? A. Yes.

Q. Did it have air in the freezing compartment?

A. Yes.

Q. Was that air held at a temperature well below 32 degrees F? A. Yes.

Q. Did it have a cooling coil in the cooling compartment? A. Yes.

Q. Did it have a freezing coil in the freezing compartment? A. Yes.

Q. Did it have a volatile refrigerant?

A. Yes.

Q. Did it have a single motor compressor condenser system? A. Yes.

Q. Did it have a thermostat in it? A. Yes.

Q. Was that thermostat responsive to the temperature of one of the compartments controlling the operation of said motor compressor condenser [1245] unit? A. It was.

The Court: I did not hear that last answer.



(Testimony of Glenn Muffly.)

The Witness: I said it was.

Q. (By Mr. Ramsey): Do you remember the names of the make or makes of those cabinets?

A. There were Nizer, Frigidaire, Liquid Carbonic, McCray, a number of manufacturers of cabinets and systems.

Q. Was a cabinet a refrigerator?      A. Yes.

The Court: Is it your testimony that all of these various manufacturers had refrigerators containing all these elements?

A. There were a number who sold them. It was not always the same manufacturer who made the cabinet and made the system.

The Court: Assume that they were assembled.

The Witness: Yes; one bought a system from Frigidaire, say, put it into a McCray cabinet or a Liquid Carbonic.

The Court: Then the cabinet, as assembled, had all these elements in it?

The Witness: Had them all in, and it was sold as a unit.

The Court: That is all I wanted to know.

Q. (By Mr. Ramsey): Where did you see these cabinets?

A. Saw them in places of business in use. [1246]

Q. For example?

A. In grocers, butcher shops, in places that dealt in foods, restaurants, soda fountains, drug-stores, commercial use, commercial places of business.

(Testimony of Glenn Muffly.)

Q. In what cities did you see them in?

A. Largely around Chicago and in the Midwest.

Q. You were there at that time? A. Yes.

Q. Going to your experience from 1925 to 1929 when you were at Copeland. A. Yes.

Q. While you were there, what efforts did you make, if any, to make a household refrigerator having those elements?

A. I started early in 1926 to build such a refrigerator, and did build one model, and due to the fact that the management did not think they could sell so expensive a refrigerator I had to shelve that and concentrate on the night-and-day job of designing one they did produce and put on the market the 1st of July, 1926.

Q. Was there only one made during your employment in Copeland?

A. No, that was the first one. After this Copeland model that was put into production had gotten smoothly running into production, I went back to the development of a two-temperature cabinet and built three or four more. [1247]

Q. Did each of those include the elements that I noted in connection with the display cases?

A. A couple of them did.

Q. When was the last one made?

A. In 1929.

Q. What time in 1929?

A. Finished in the summer of 1929.

Q. Let us consider next the file wrapper of the original patent that is Defendants' Exhibit——

(Testimony of Glenn Muffly.)

The Court: You mean the original Bronaugh-Potter patent?

Mr. Ramsey: Of the original, yes, Defendants' Exhibit 101. Would you please hand that to the witness?

Mr. Cuninghame: I object.

The Court: On what ground, Mr. Cuninghame?

Mr. Cuninghame: Well, if your Honor please, I can see no purpose in going into this file wrapper. It is complete in and of itself. It proves by itself anything that can ever be said about it. It contains the arguments of the Bronaugh and Potter attorneys. It contains the actions of the skilled experts in the Patent Office. Certainly there is nothing that is needed from this. Whatever Mr. Muffly, who had nothing whatsoever to do with it and who has not been qualified to have anything to do with it, he could add nothing. It would be much more relevant to have some witness here from the Patent Office, but the whole thing is all [1248] in, in black and white. You cannot change it. It is no more, no less, and there seems no reason to me to have any questions about it.

The Court: Mr. Cuninghame, we permitted Mr. Parker to discuss the reach of the claims and to describe the patent in the reissue patent, and that is one of the things that is commonly done in patent cases, is to have a patent expert explain the technical aspects of the patent and the history thereof.

Mr. Cuninghame: I think I did not make myself clear, your Honor. This is simply the papers back

(Testimony of Glenn Muffly.)

and forth in the Patent Office, and now I think they are complete and speak for themselves, and there is nothing——

The Court: You might be right, but Mr. Ramsey has not asked a question yet.

Mr. Ramsey: I wonder whether we might have the large exhibit on the smaller easel, 16-A, before the jury, and whether we might have the blackboard so that the witness can show the jury exactly the purport of his testimony that is to follow.

(Items referred to brought before the jury.)

Q. (By Mr. Ramsey): Mr. Muffly, Exhibit 16-A is a reproduction and a large reproduction of Patent No. 2,056,165, the drawing of it, and also of the patent in suit. Do you understand the operation of that refrigerator? [1249]

A. I do.

Q. I wonder if you would step to the blackboard and would show how the structure operates because sometimes a drawing is a little difficult to read.

(Witness leaves witness stand and steps to the blackboard.)

The Witness: This is the front view of the refrigerator sawed off so we can look into the compartments. This is the view you would get looking at the same refrigerator from the right-hand side, and this line that runs down through here, broken line, shows there the refrigerator was sawed off to make this view.

(Testimony of Glenn Muffly.)

Mr. Byron: Figures 1 and 2 are you talking about?

The Witness: Figure 2, at the right the line, broken line 1-1 which is the section to show where Figure 1 was taken as if we stood here and looked at this refrigerator sawed off on that line. Most of what is to be seen could be seen in Figure 1, the front view, but since some of these parts are small and they are partially hidden and there is dotted lines, insulation, I will sketch roughly (sketching on blackboard) the Figure 1 and add the parts as I come to them.

This rectangle is the outside of the cabinet, and in the lower compartment you see a horizontal line below the insulation shown in section, and down here is [1250] the machinery compartment. In that compartment we have a compressor 15. Now, I am not going to reproduce the drawing. I am just going to make an outline. (Draws on blackboard). That is the compressor 15. The compressor is simply a pump and pumps gas, a vapor. That pump discharges into the condenser which we see in the patent drawing behind the compressor, but I am putting the condenser represented merely by some loops of tubing, and I am putting the condenser to the right of the compressor so we can see it, and that is numbered 18.

Now, the condenser at its bottom shows a tube and a dotted line which represents a tube that runs into this cylindrical receiver which is merely a drum, a container to hold the—that runs into the



(Testimony of Glenn Muffly.)

top of the container, and from the bottom of that container there is another pipe running from the receiver 17, there is a tube which runs up into the refrigerator. Now the main receiver is self-explanatory. It receives the condensed refrigerant from the condenser. Our compressor pumps the gas under high pressure into the condenser tubing, and due to the high pressure and the fact that air is blown across it this liquefies, and liquid refrigerant runs over into this drum 17 that we call a receiver (drawing on blackboard).

Now, the refrigerator proper has insulated walls, and within those insulated walls are two compartments bounded [1251] by what we call a liner, the metallic liner, usually sheet steel, porcelain enamel especially in any refrigerator. [1252]

This tube that leads from the bottom of the receiver 17 is spoken of as the liquid line because it carries liquid refrigerant up through the insulation to a small recess in the insulation. In that recess there is a device marked 23, and that is called an expansion valve. I'll put my numeral 23 where it's not in the way because from this expansion valve 23 there is a tube that enters this compartment (indicating) and drops down.

I have put the expansion valve in the right-hand side merely so we can see it in this view. In this view (indicating) it says "23" and points but you can't see what it points to. In this view you can see the expansion valve 23 and there is a little

(Testimony of Glenn Muffly.)

recess to hold it. That recess is behind the brine tank, this assembly (indicating), so you couldn't see it in this view, so I am putting it from here (indicating) over there (indicating) so you can see it.

From this expansion valve a pipe comes over as shown by the dotted line (indicating), down across and back and forth in that manner.

Now, in tracing this system thus far we have compressed the refrigerant gas in the condenser 18. That has liquefied, turned the gas into liquid by condensing it in what we call the condenser. We have accumulated, just saved up some of the liquid in the accumulator or receiver.

We take from the bottom of this a small [1253] tube carrying liquid, that liquid is filtered to the high compression of the condenser and the liquid goes up the compression valve at which point the pressure is changed to about five pounds per square inch, whereas it was on the order of 125 pounds per square inch in the condenser, the receiver, and the liquid line.

So now we have refrigerant liquid at about five pounds gauge pressure flowing into this tube which surrounds a small chamber that is marked 12, and that is the freezer.

In addition there are some still smaller sleeves to receive ice trays and those are numbered 19. Now, this coil that I have just drawn—expansion coil—is No. 22. That is the freezing refrigerant coil or evaporator or expander—it's called various things. This coil is within a brine tank so we have

(Testimony of Glenn Muffly.)

a wall here that is a metal wall and in and around the tube and around these sleeves, including the 12, which is the largest one, there is brine.

Now, the compartment at the left of this compartment 13 is called a frozen food storage compartment or it's referred to as being around 20 degrees. That is cooled by contact of air with this brine tank. The brine within the tank is cooled by the coil 22, in which the refrigerant is evaporating, so that we have at the outlet of this a mixture of vapor and liquid refrigerant.

I will come back to this expansion valve [1254] and how that can be adjusted to vary the operation.

Now, this tube that leaves the freezing coil 22 goes up the back of the box or through the insulation and reaches this point up here behind that control 31, but it doesn't connect with the control in any way. It comes up through the insulation and connects directly across through this coil 25, as we see above. So we will bring this tube in to the upper compartment. That is identified as 14. And we will connect it to this coil 25.

Now, the coil 25 is connected at its outlet back to the inlet side of the compressor. In the drawing it shows it coming down through the insulation at the right-hand side. We have to follow the arrow-heads and trace it across over to the compressor. Since it will be easier to trace the path of this I will bring that tube down the left-hand side.

Now, understand, it makes no difference where we take it to get it out of the way. That is merely

(Testimony of Glenn Muffly.)

the conduit that brings the vapor back to the compressor to be recompressed, and I am bringing it in the top of the compressor which is an ordinary normal type of compressor rather than the rather peculiar shaped one that is in the drawing. But this compressor is, as I say, a pump. It has a piston. It could have a rotary piston, but usually is the common reciprocating-type piston. [1255]

That piston on its downstroke draws gas from this suction line and on its upstroke it pushes that gas under high pressure over into the condenser tube. This arrow is to show the direction of flow and I will put an arrow on the suction tube that leads from the evaporator or through the coil 25 back to the suction side of the compressor.

Now, that completes the refrigerant circuit of which the high pressure or condenser condensing phase starts at the outlet of it as the pressure goes through the condenser—no—through the expansion valve, and at that point we allow the refrigerant to expand. The expansion valve is a pressure-reducing valve that opens whenever the pressure in this coil falls below, say, five pounds, and it closes when it gets above it and maintains a standard operating condition pressure within that coil. That valve is adjustable so that we can change that pressure to suit the operation we want.

Now, the 100-pound pressure—or, 125-pound or so pressure refrigerant liquid reaches the valve and leaves it at five or ten pounds, whatever we set that to. So having taken the pressure off of this liquid,



(Testimony of Glenn Muffly.)

it is free to evaporate, hence we call this an evaporator coil. It expands in evaporation so we sometimes call it an expansion coil. In evaporating it absorbs heat from the brine around the tube and from these sleeves in which you put the ice trays and this larger sleeve, that is called the [1256] freezer.

If that brine has absorbed all of the latent heat of this liquid refrigerant and converted it all into vapor, we would have vapor passing up through this tube and into the top of the expansion coil 25 or cooling coil in the warmer compartment.

Q. (By Mr. Ramsey): Pardon me, Mr. Muffly.

A. Yes.

Q. Looking at 16-A, does it go into the top or does it go into the bottom of the coil 25?

A. It goes into the top, I believe. Wait a minute.

Q. I don't know if it makes any difference.

A. No, it doesn't make any difference, and it does go in the bottom. I will make it go in the bottom so it will be more—it's a matter of designers' choice. It could be done either way. We had it going in the bottom here and here in the top—or in the bottom up here. Thank you.

Q. I may have interrupted your train of thought. You were saying what the refrigerant does in the two coils.

A. Yes. Assuming first that the refrigerant had evaporated entirely in the coil 22, then we would have cold refrigerant vapor in this tube. That cold



(Testimony of Glenn Muffly.)

vapor would, of course, cool this coil but we would have used most of our refrigerating effect up down here in this brine tank, and the vapor would warm up a bit passing through this compartment in which the air is supposed to be about 40 degrees. [1257]

Mr. Byron: Will you please give a number, Mr. Muffly?

The Witness: In compartment 14. Pardon me.

Q. (By Mr. Ramsey): In the coil?

A. And the coil 25, this warms up approaching the temperature of the air in the compartment 14, and this vapor then flows back to the compressor at a somewhat warmer temperature than it had in the coil, but still on the cool side. But when it is compressed the act of compressing makes that vapor hot as well as under high pressure. So we discharge hot high-pressure vapor into the top of the condenser 18.

Q. That completes the cycle?

A. That completes the cycle.

I haven't put the thermostat in here. Now, that is numbered 31. I didn't draw the motor down here that drives the compressor, but you can assume there is a motor.

Q. What number is given to it?

A. The motor is numbered 16. We can——

Q. Don't bother.

A. Over here there would be a belt to drive the compressor 15 as we see in Figure 1 of the patent drawing. We see the motor 16 at the right and a belt drive over to a pulley behind the compressor 15.

(Testimony of Glenn Muffly.)

Now, to control that motor I had better indicate the motor. There are two wires, of course, come to it from your power source, and one of those wires has to be connected [1258] up and through this thermostat which is really a switch. This stops and starts this motor. So in the thermostat 31 it gets down to the temperature that is desired of the air in the compartment 14, this thermostat opens a switch and stops the motor so the compressor stops and the idle cycle of gradually warming up starts.

Q. Is this a thermostat like a thermostat in a furnace as in a person's home?

A. Yes, that is the same thing except it operates at a different temperature range. If you merely adjust this high enough and then reverse the switch so it would turn on when you get cold instead of turning on when you get warm it would be a suitable thermostat to put on a wall of the house to run the oil burner. This is a cooling thermostat, and the difference between this and a heating thermostat is merely the range of temperature and whether it opens or closes.

Q. I believe that you first made an assumption that all of the liquid was evaporated in the coil 22 and only vapor passed from 22 to 25. Was that—

A. Yes. Yes. And that would be the condition when this system was started up warm, the first time you started it it would no doubt do that and the brine being warm and this compartment being warm, the refrigerant would evaporate very rapidly in the coil 22, and there would be no liquid flow

(Testimony of Glenn Muffly.)

through to cool the coil 25, and it would have only the [1259] cooling effect of a little vapor. That wouldn't be enough so in actual operation there must be liquid remaining in the tube—a mixture of liquid and vapor passing up and into the coil.

Mr. Byron: What is the number of that coil?

The Witness: 25. The liquid would be flowing upwardly from the coil 22 to the coil 25, so some of the liquid would have to evaporate up here within the coil—that is within the compartment 14. And that is necessary in order to have enough cooling effect to cool the compartment 14 because——

Q. (By Mr. Ramsey): May I interrupt you? Now, explaining that portion of the patent in suit appearing in Column 5, Lines 7 to 12, which reads: “The refrigerant will be completely vaporized in coil 22 until the temperatures of the compartments near said minima, when some of the refrigerant will reach the coil 25 in liquid form, and, by vaporizing therein, will cool compartment 14.” [1260]

A. Correct, yes. I am reading one which is said in almost the same way.

Now, I was just starting to explain that during that period when all of the evaporation occurred in the coil 22 we have used up practically all of the cooling effect of the refrigerant which is very largely latent heat. It is called evaporative refrigerant. It does its cooling by the act of evaporating, thereby taking up heat. It is that latent heat, the evaporation of the refrigerant which boils at 8 degrees. It boils at a very low temperature. Don't let

(Testimony of Glenn Muffly.)

the word "boil" lead you astray. It is boiling at about 8 degrees below zero, and until this gets cooled down, the brine tank containing the coil 22 is cooled down to a point, that is, not all of the liquid must evaporate in that coil, we will have only vapor, and as long as this is pulled down then we will have liquid flowing through, through coil 25 to evaporate there, and the assumption is that it gets all evaporated, it leaves gas down from the compressor because we want only vapor going back through the compressor.

Now, the temperature of this coil 22 is very positively tied to the pressure at which the refrigerant boils. It happens that the refrigerant in common use, most of the refrigerators on the market use a refrigerant called F-12 for short. That refrigerant boils at about 20 or 22 [1261] degrees below zero, if you had it at atmosphere, and at this particular pressure it boils at 8 degrees below zero, so this vapor and liquid mixture, as long as there is vapor located in that tube the temperature of that coil will be that 8 degrees below zero.

Q. Might I ask you, Mr. Muffly, are you familiar with the refrigerant system in the Anderson patent?      A. Yes.

Q. I wonder if we could have the Anderson patent put up there.

(Document presented.)

Without going through a long explanation of the refrigeration circuit and the effects and limiting



(Testimony of Glenn Muffly.)

factors, would you or would you not say that the same system is shown in Anderson?

A. Yes, that is the same system.

Q. Is that 16-B you are pointing at now? That is on the top, I believe.

A. Exhibit 16-B.

Q. Does that system, as exemplified in Anderson, have the parts possibly shown in different conformation?

A. Yes, I can trace it very quickly. The expansion valve 33 expands into the freezing coil 34. It goes up into the coil 40 which is in the cooling compartment, and from that it comes back. [1262]

Q. Is the cooling compartment 6?

A. Cooling compartment 6. It passed first through the coil that is in the freezing compartment 7 and went up to the upper compartment and through the expansion coil 40 which is on the wall on the inside of the compartment 6, thereby cooling that compartment, and at its outlet end it goes down to the compressor which is back behind the motor 25. Again, it goes over through the expansion valve.

Q. That is completing the circuit?

A. Completing the circuit. The expansion valve 33 corresponds to the expansion valve 23 of the patent in suit. The evaporator coil 34 corresponds to the evaporator coil 22 of the patent in suit. The cooling coil 40 corresponds to the cooling coil 25 in the patent in suit. The compressor 20 corresponds—



(Testimony of Glenn Muffly.)

which is behind the motor 25—corresponds to the compressor 15 of the patent in suit, which has the motor shown off to the side as 16, and the thermostat 31 is in the Anderson patent, Exhibit 16-B, in the specification and is located on the vertical dividing member between the two front doors, so it is in the compartment 6, and it stops and starts the motor 25 just as the thermostat 31 stops and starts the motor 16 that drives the compressor 15 in the Potter patent.

Q. Taking up this question of the necessity of having liquid refrigerant in the cooling coils of these two, does [1263] or does not the same situation hold? A. In Anderson as in Potter?

Q. As in Potter.

A. The same situation, there must be liquid refrigerant flow entirely through the coil 34 and up through coil 40 in order to cool the compartment 6 of Anderson.

Q. Thank you.

I wonder with that explanation and that setting we might go to the file wrapper. Why don't you sit down, Mr. Muffly. We have this before us.

(Witness returns to the witness stand.)

The Court: May I ask what was the purpose of this whole description, just to describe the system?

Mr. Ramsey: Partly that, if the Court please, just so that the jury, being not refrigerating engineers, would know exactly how it works, but the

(Testimony of Glenn Muffly.)

particular point that is to be emphasized is that, as we find in this file wrapper, Anderson was the principal reference against the allowance of the claims and Anderson—I mean Potter—through his attorney represented to the Examiner that Potter differed from Anderson in that Anderson had liquid refrigerant in the coil, in the cooling coil, and that made it different, and secured the allowance of the claims over the representation, while even in his own patent right in the body of his specification he contends otherwise, and we will point that [1264] out in the file wrapper.

The Court: Very well; give Mr. Muffly the file wrapper.

Q. (By Mr. Ramsey): Would you explain to the jury the nature of a file wrapper?

A. A file wrapper is really the file and contents, and it acquired that name because it is done up in a package and called a file wrapper. It really is all the correspondence starting with the application of the inventor for the patent. He has to furnish a drawing and a description called a specification and certain paragraphs that are called claims to point out what he claims is his invention. This is the start of the file wrapper.

The next paper is usually an action from the Patent Office probably rejecting some or all of the claims, and so on, the correspondence goes back and forth between the attorneys and the Examiner in the Patent Office until some conclusion is reached; he gets the patent or he doesn't, and after the pat-

(Testimony of Glenn Muffly.)

ent issues this becomes public. Anyone may obtain a copy or go to the Patent Office and read it. Until the patent issues, this is secret, this is secret in the Patent Office.

Q. In other words, that is the history of the proceedings in the Patent Office?

A. Correct. [1265]

Q. I wonder if the witness might be handed Defendants' Exhibit 114-M which is a soft paper copy of the original patent. You will remember that as a soft paper copy.

A. I think I have one here. It is 2,056,165.

Mr. Ramsey: That is correct.

The Court: Here is a soft copy.

Mr. Ramsey: The other was marked, and I have a definite reason why I want to show that exact one, show the marked one if we have it available. Let us pass it, and we will come back when that copy is found.

Q. Mr. Muffly, have you read the claims in the patent in suit?           A. I have.

Q. Have you read the specifications of both the original and the reissue patent in suit?

A. I have.

Q. You have Defendants' Exhibit 114-M?

A. 114-M is a soft copy to a reissue patent, and I am looking at the file wrapper of the original patent.

Q. Would the same specification hold?

Mr. Cuninghame: If your Honor please, I ob-

(Testimony of Glenn Muffly.)

ject. What does that mean, with the same specification—are they the same?

Q. (By Mr. Ramsey): Are they the same?

The Witness: The two specifications are the same, with [1266] minute differences, the original patent and the reissue.

Q. What does the Exhibit 114-M show with regard to additions to the specifications at some time represented by the file wrapper?

A. This shows—which is also in the file wrapper—that a considerable part, over half I would say or approximately half of the specification was added by insertion on January 29, 1934, which is nearly three years later, two-plus years later than the filing.

Q. What did that replace, about how many lines?

A. That replaced the words which were canceled. I will read the canceled words.

Q. Would you tell us? That would give us the picture.

A. “The relation of the various compartments may, of course, be varied. It is important only that the food storage or cooling compartment be thermally insulated as fully as practical from the freezing and cold storage compartments in order that there may be no transfer of heat between same other than that which passes through the expansion line itself.”

Mr. Cuninghame: May I ask from where he is reading? I have not found it.



(Testimony of Glenn Muffly.)

The Court: I have not found it either. Are you reading from the reissue?

The Witness: I am reading from the words that were [1267] canceled in the original, but it is not in the printed copy here. It is in this file wrapper here.

Mr. Cuningham: Where?

The Court: What page?

Mr. Cheatham: Your Honor, if you please, you will remember there was quite a bit of discussion about this Exhibit 114-M, and this is what we were handed, and I see other things in the exhibit which is officially before the Court. I would like to see what 114 is officially.

The Court: What page of the file wrapper?

Mr. Ramsey: 48.

Mr. Cuningham: If your Honor please, I see this here, this copy, this original marked exhibit, that did not appear in the copy furnished us by the defendants, quite a lot of things.

Mr. Ramsey: What?

The Court: What?

Mr. Cuningham: Well, this stapled on here, pasted on here, the markings do not seem to me to correspond, and there is a legend in the margin. May we have a look at this before any further questions are asked?

The Court: You may look at it.

Mr. Ramsey: The original exhibits have been in the courtroom several weeks.

The Witness: I believe I have found the—Page



(Testimony of Glenn Muffly.)

48 of [1268] file wrapper is what we are looking for.

The Court: Is that the portion that was deleted?

The Witness: That is mostly a portion added. First some lines are canceled, and then a lot is added, and an addition, the addition goes from Page 48——

Q. (By Mr. Ramsey): The original specification and the part deleted is shown in the file wrapper, Page 6?

A. Yes; here is the part deleted on the relation of the various compartments down to compartments 12 and 13, respectively. It is on Lines 18 to 24 of Page 6 of the file wrapper.

Mr. Cuninghame: We have found it, your Honor.

The Court: Do you see it?

Mr. Cuninghame: Yes, but it is not in the exhibit as given us, copy of the exhibit. I have not checked the rest of those.

Mr. Ramsey: If counsel will remember, we could not find that, and you asked me what 114-M is, and I said it is only a soft paper copy and that we marked the portion that was deleted and the portion that was added, and I said that the part that was deleted was applied over it, and there was a mark on the margin showing the substitution, showing what was substituted for what.

Mr. Cheatham: I would not like to argue, but I do not remember that. [1269]